

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
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EXPORT ADMINISTRATION ACT AMENDMENTS OF 1979

MAY 15, 1979.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. BINGHAM, from the Committee on Foreign Affairs,  
submitted the following

R E P O R T

together with

INDIVIDUAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 4034]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 4034) to provide for continuation of authority to regulate exports, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

COMMITTEE ACTION

The Subcommittee on International Economic Policy and Trade considered the following bills amending the Export Administration Act which were referred to the Committee on Foreign Affairs and subsequently to the subcommittee: H.R. 2344, introduced on February 22, 1979 by Mr. McKinney; H.R. 2539, introduced on March 1 by Mr. Bingham; H.R. 3154, introduced on March 21 by Mr. Gibbons; H.R. 3216, introduced on March 22 by Mr. Wolff; and H.R. 3301, introduced on March 28 by Mr. McKinney.

The subcommittee held hearings on February 15 and 22, March 7, 8, 14, 15, 21, 22, 26, 27, and 28, and April 3 and 4, 1979. On April 24, 25, and 26, the subcommittee met in open markup session to consider the above-mentioned bills, as well as H.R. 3652, transmitted to the Speaker by the Secretary of Commerce on April 17 (Executive Communication 1300) and introduced (by request) by Mr. Bingham on April 23. On April 26, the subcommittee voted to report a clean bill to the full committee.

Also at its April 26 meeting, the subcommittee heard executive branch testimony on H.R. 3653, to authorize funds for fiscal years 1980 and 1981 for the collection and analysis of foreign investment data

under the International Investment Survey Act. The subcommittee reported the legislation favorably and concurred in the subcommittee chairman's proposal to include the legislation as a separate title in the bill extending the Export Administration Act of 1969.

H.R. 3783, the bill reflecting the subcommittee's action, was introduced on April 30 by Hon. Jonathan B. Bingham, chairman of the subcommittee, and was referred to the Committee on Foreign Affairs. The committee held hearings on H.R. 3783 on May 1 and 2 and met in open markup sessions on May 3, 4, 7, 8, and 9. On May 9 the committee directed that a clean bill incorporating the amendments adopted by the committee be introduced. On May 10 Hon. Jonathan B. Bingham introduced H.R. 4034, which was referred to the committee and reported favorably to the House. H.R. 4034 reflects the committee's action and recommendations on all of the bills referred to above.

#### H.R. 3216

In the course of its consideration of amendments to the Export Administration Act, the committee devoted particular attention to H.R. 3216, a bill introduced by Mr. Wolff, a member of the committee, and cosponsored by 24 other Members. Executive agency comment was requested and received on H.R. 3216, and subcommittee hearings (March 22 and 27 and April 3) were devoted especially to the bill. Numerous amendments were proposed and considered by both the subcommittee and full committee which reflect or were drawn directly from H.R. 3216. H.R. 4034, the bill reported by the committee, includes provisions similar to ones proposed in H.R. 3216, specifically a mandate for continued study of a "critical technologies" approach to export controls and specification of the role of the Secretary of Defense in the review of export licenses for national security purposes, including special procedures permitting the Secretary of Defense to appeal particular license decisions to the President.

#### PURPOSE

The principal purpose of H.R. 4034 is to extend and authorize funds to implement the Export Administration Act of 1969, and to make reforms in the imposition and administration of export controls under that act for national security, foreign policy, and short supply purposes. The act is extended for 4 years (through fiscal year 1983), and funds totaling \$14,847,000 are authorized to be appropriated for the 2 fiscal years 1980 and 1981 to carry out the act. The legislation also provides for continued collection and analysis of data on foreign investment in the United States and American investment outside the United States, by authorizing funds for the International Investment Survey Act of 1976 for fiscal years 1980 and 1981.

#### BACKGROUND

The Export Administration Act of 1969 constitutes the basic authority for controlling the export of most civilian products from the United States. (Related acts are the Arms Export Control Act, pertaining to the export of arms, ammunition, and implements of war,

and the Nuclear Non-Proliferation Act of 1978, pertaining to the export of nuclear materials and technology.)

The act authorizes the President to regulate exports for the purposes of (1) protecting the domestic economy from the excessive drain of scarce materials and reducing the inflationary impact of foreign demand; (2) furthering the foreign policy of the United States and fulfilling its international responsibilities; and (3) exercising vigilance over exports from the standpoint of their significance to the national security of the United States.

The act also states that it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person, and prohibits any United States person from taking certain actions with the intent to comply with, further, or support any such boycott. The provisions of the act pertaining to foreign boycotts were added by the Export Administration Amendments of 1977 (Public Law 95-52) and are extended without change by H.R. 4034.

Likewise, no change was made in existing provisions giving the executive branch discretionary authority to monitor and control exports of items which are or may become scarce within the United States. The existing provision allowing for Congressional veto of any short supply controls on agricultural products is extended without change. The bill does provide, however, an exemption from short-supply controls for goods involved in certain barter agreements approved by the Secretary of Commerce, in addition to the existing exemption for agricultural commodities purchased by foreign entities but stored in the United States.

The use of export controls for national security purposes is a subject of continuing concern which was considered in detail by the Committee on Foreign Affairs and its Subcommittee on International Economic Policy and Trade. In the Export Administration Amendments of 1977, the Committee initiated reform in the use of export controls for national security purposes—the most frequent and, at that time, the most contentious use of export controls. In its Report No. 95-190 of the 95th Congress, the Committee stated its intent in the Export Administration Amendments of 1977 to address three broad concerns: (1) the presumptions that exporting is a privilege rather than a right, and that all exports are prohibited unless licensed—presumptions which, in the Committee's judgment, contribute fundamentally to the maintenance of obsolete controls and to the persistence of inefficient licensing procedures; (2) the exclusive emphasis of the Act on exports to communist countries, and the failure of United States export control efforts to distinguish effectively between those technologies and products which are critical to United States national security and those which are of only marginal importance; and (3) the excessive secrecy of the export licensing process, which contributes to the insensitivity of the process to congressionally mandated reform.

The administration of export controls has not substantially improved since the enactment of the Export Administration Amendments of 1977. The number of export license applications received

by the Department of Commerce has been increasing at a rate of about 20 percent per year—from 54,000 in 1977, to 65,000 in 1978, to a current rate of 77,000 in 1979. Meanwhile, the number of applications requiring more time to process than the 90 days envisioned in the law is growing even faster: from 689 in 1976 to 1,032 in 1977, a 50 percent increase; and to 1,988 in 1978, nearly a 100 percent increase. Less than one-half of one percent of all applications received in 1978 were rejected.

The Committee finds these figures alarming for several reasons. First, they indicate that the export licensing bureaucracy is becoming inundated with more license applications than it can reach considered judgment on. The Committee does not believe that the national security is well served by this situation. The ratio of licenses received to licenses denied indicates that far too much review is undertaken for the amount of control achieved. Second, the extensiveness of United States validated license controls is not matched by other countries. Some of these license requirements constitute, in effect, unilateral controls by the United States which disadvantage United States companies in the competition for exports without restricting what can be acquired by countries which threaten U.S. national security. Third, extensive licensing delays not only risk cancellation of orders, but also cause foreign customers to take future business elsewhere. Again, this does little to protect U.S. national security; it merely means that goods and technology which would be exported by U.S. firms are exported instead by foreign competitors.

U.S. export restrictions for national security purposes must always be assessed in light of the degree of cooperation that can be obtained from other technologically advanced trading nations. International cooperation with respect to national security export controls is achieved through (1) an informal international Coordinating Committee (COCOM) consisting of the NATO countries (less Iceland) and Japan and (2) bi-lateral consultations and negotiations with firms and governments in several other countries which, while not members of COCOM, are sometimes willing to cooperate with U.S. and COCOM export control policies.

U.S. and COCOM export control policies and procedures are closely intertwined, through the informal nature of the organization leaves each participating country free to exercise unilateral discretion. The Committee has monitored closely the degree of cooperation being achieved in COCOM, and has continued to find instances of circumvention of COCOM that have been detrimental to both U.S. security and export competitiveness. The revisions in the Export Administration Act of 1969 made by H.R. 4034 continue to take account of the need to achieve international cooperation through COCOM, as well as mandating steps to improve the integrity and effectiveness of this imperfect but irreplaceable mechanism. By providing for speedier U.S. consideration of more routine exports and full but prompt consideration of the more significant ones, H.R. 4034 attempts to restore COCOM confidence in U.S. controls and to remove incentives for other COCOM countries to circumvent COCOM. At the same time, the bill contains a provision requiring the Department of State to negotiate within COCOM to achieve more complete and enforceable adherence to COCOM decisions by all participating countries.

Since the enactment of the Export Administration Amendments of 1977, the use of export controls for foreign policy purposes has become a subject of considerable controversy. Foreign policy controls now in effect under the authority of the Export Administration Act for human rights and other foreign policy purposes include the following: (1) controls on the export of petroleum equipment to the Soviet Union; (2) a prohibition on the export to South Africa of all items for use by the police and military forces, and controls on certain high technology and civilian aircraft exports to South Africa; (3) controls on crime control and detection equipment and vehicles with potential military use to most non-NATO countries; (4) controls on COCOM-controlled items and shotguns to law enforcement or military consignees in most non-NATO countries; (5) controls on aircraft and communications equipment to countries in the Middle East; and (6) controls on exports that would directly assist the space program of India or the offensive military capability of Taiwan or South Korea. In addition, a provision of the law enacted in 1978 imposes a trade embargo on Uganda; this bill repeals that provision.

Debate over these controls has centered not only on the advisability of any single control, but also on the questions of whether the objectives of the controls are clear, whether the controls are effective in furthering those objectives, whether the economic costs to the United States and its companies and citizens are taken fully into account, and whether the implementation of the controls is undertaken with appropriate regard for due process.

Against this background, the principal objectives of H.R. 4034 are the following: (1) to reduce the number of items subject to validated license controls through the creation of a qualified general license under which multiple exports of items not requiring COCOM approval could be made; (2) to increase and improve the scrutiny devoted to items remaining subject to validated license controls and of greatest potential significance to the military capability of countries threatening U.S. national security; (3) to improve the efficiency of the licensing process through the establishment of a system of "suspense points," at which license applications would have to be either approved or denied, or escalated to higher bureaucratic levels for further consideration; and (4) to establish a set of criteria and procedural requirements to govern the use of foreign policy controls.

The Committee believes that the reforms made by H.R. 4034 would reduce barriers to exports while increasing the effectiveness of export controls from the point of view of national security and foreign policy. By reducing the scope of validated license controls, a great deal of routine and unnecessary paperwork would be eliminated, which would both facilitate routine exports and permit licensing officers to pay more attention to the more significant national security cases. By establishing a series of "suspense points" within the licensing bureaucracy, attention would be focused early on problem cases, and those cases would be moved quickly to interagency review and, if necessary, to high policy-making levels; meanwhile, more routine cases would be disposed of quickly and would not be permitted to distract attention from the important cases. By establishing criteria for foreign policy controls, the executive branch would be required to focus more attention on these controls to better ensure that they are more limited, predictable, and effective.

## MAJOR PROVISIONS

### ROLE OF PRESIDENT, DEPARTMENTS, AND THE CONGRESS

The purposes of and criteria for the restriction of U.S. exports set forth in the policy section of the Export Administration Act and the amendments made by H.R. 4034 are complex and diverse. While there is need to make these criteria and the procedures for achieving them as precise as possible, considerable judgment and discretion must be exercised to carry them out effectively. Similarly, while the Committee seeks to make the process of export licensing more accountable to the public and to the Congress, the Congress is simply not equipped to administer export controls or to make the many day-to-day assessments and policy decisions that must be made in determining what proposed transactions should be restricted.

In the Committee's view, the best assurance that the various purposes of the Export Administration Act will be fulfilled is achieved by according an appropriate role in the licensing process to each of the Executive agencies with the expertise and responsibility to carry out the purposes of export controls. H.R. 4034 preserves and strengthens the current sharing of responsibility among the Departments of Commerce, Defense, and State, with sufficient opportunity for Presidential and Congressional review and decision to resolve new policy questions and particularly significant cases that may arise. The Secretary of Commerce retains the lead role in administering export control policies and procedures, with the support and consensus of the Secretaries of Defense and State. The sharing of authority and responsibility among these three key departments has evolved informally over the years during which the export control program has been in existence. The Committee bill defines that working relationship more precisely than existing law in order to permit closer monitoring of the export control process. The Committee concluded, however, that any major shift in the sharing of responsibility and authority, particularly among these three Departments, would jeopardize one or more of the major goals of the Act to the detriment of overall U.S. interests.

While the Commerce Department remains the lead administering Department, the Department of Defense remains vested with responsibility and authority in certain aspects of the export licensing process. As is currently the practice, the Department of Defense would conduct the technical evaluation of the military implications and potential military applicability of proposed exports. In addition, concurrence of that Department would be required for any changes in the list governing commodities subject to controls. As is the case in present law, the Secretary of Defense is specifically authorized to appeal to the President any export license decisions which the Department of Defense considers inconsistent with U.S. national security.

H.R. 4034 makes explicit the existing role of the State Department in recommending the use of export controls for foreign policy purposes, and in carrying out the multilateral aspects of export controls, particularly U.S. participation in and efforts to improve the effectiveness of the multilateral Coordinating Committee (COCOM). This authority would, for the first time, be transferred from the now obsolete Battle Act (Mutual Defense Assistance Control Act of 1951) and consolidated with other export control authorities under the Export Administration Act.

The sheer volume of export license applications, as well as the detailed technical evaluations upon which export decisions are based, precludes Presidential or Congressional involvement in particular export cases. Many aspects of the control process are routine, and excessive Congressional or Presidential intervention would hinder the efficient and effective administration of the program. The bill, however, provides for Presidential decisions in any case appealed to the President by the Secretary of Defense, and explicitly authorizes the President to require the use of validated licenses and to waive certain foreign availability considerations stipulated in this bill when he deems such actions necessary in the interests of national security. In addition, H.R. 4034 calls for license decisions to be made by the President if time limits for lower-level consideration are not met, and authorizes the President to waive such time limits in particularly important cases if necessary in order to renegotiate license applications with the applicant or foreign customer.

In addition to assuring Congressional access to all information, past and current, with respect to export controls, including the details of particular licenses and license applications, H.R. 4034 provides for Congressional veto of any proposed new or expanded use of export controls for foreign policy purposes.

#### SEPARATION OF NATIONAL SECURITY AND FOREIGN POLICY CONTROLS

National security and foreign policy controls have different purposes and should be governed by different criteria and procedures. National security controls have a very clear and precise purpose: to prevent the acquisition or delay by hostile or potentially hostile countries of goods and technology which would significantly enhance their military capabilities to the detriment of U.S. national security. This purpose has clear implications not only for the type of goods and technology which should be subject to control, but also for such matters as foreign availability and the role of Congress. Foreign availability of a sufficient magnitude by definition makes United States controls ineffective to prevent the acquisition of such goods and technology by such countries. The factors involved in making licensing determinations are highly technical, which makes any congressional role difficult.

The purposes of foreign policy controls are more vague and more diffuse. The purposes can range from changing the human rights policy of another country; to inhibiting another country's capacity to threaten the security of countries friendly to the United States; to associating the United States diplomatically with one group of countries as against another; to disassociating the United States from a repressive regime. Unlike the situation with national security controls, some of these foreign policy purposes may be served by denying exports even where foreign availability exists. (In the hypothetical case frequently mentioned in hearings and markup, the United States would not want to export thumb screws, even if other countries were doing so.) Since decisions on foreign policy controls are often more political than technical, congressional involvement in those decisions is more appropriate than in the case of national security controls.

The Committee believes that the distinction between these two types of control has not been adequately made in the past. It is frequently not

clear to the applicant for which purpose an item is controlled for export, or for which purpose an export is denied. The committee is not convinced that the Executive Branch itself is always clear for what purpose a control is imposed or a license denied. Accordingly, the bill consolidates the national security and foreign policy control provisions of the Act into separate sections, and requires that they be treated differently, according to the criteria and procedures appropriate to each type of control. Of the many differences between the provisions of the two sections, which are enumerated in the section-by-section analysis which follows, perhaps the most important is the provision for a congressional veto of the imposition of new foreign policy controls. There is no similar provision in the section on national security controls.

During markup, the committee considered the matter of export licenses for aircraft and other vehicles which, although officially being purchased for civilian purposes, could be used by the purchasing country to carry troops or supplies during a conflict with a country friendly to the United States. Specific mention was made that Libya, which has been involved in border conflicts with Egypt and Chad, used American-built passenger and transport planes for its recent airlift in support of the former Ugandan government of Idi Amin. It was noted that export licenses were issued last September for the sale to Syria of four L-100's, the civilian version of the C-130 military transport plane, at a time when there was debate in Congress over foreign aid appropriations to Syria because of that country's military operations against Lebanese Christians. Congress was not told then of the proposed sale.

An amendment was offered requiring that the Committee on Foreign Affairs and the Committee on Foreign Relations be notified before a license is approved for an export of more than \$7,000,000 worth of aircraft or other vehicles which, if used to carry troops or military supplies, would enhance the military logistics capability of any country which threatens the security of a nation friendly to the United States. Several members expressed concern that such an advance notification procedure might put an additional burden on the exporter and be a potential impediment to sales of essentially civilian equipment. A State Department witness testified that the Executive Branch was willing to continue informal interchanges with members of Congress on potentially controversial sales, but it would be reluctant to have such a requirement written into law.

Following the discussion, the amendment was rejected by voice vote. The committee, however, notes and welcomes the State Department's expression of willingness to discuss informally potentially controversial sales. While sales of aircraft and vehicles for legitimate civilian transportation purposes should not be inhibited, the Executive Branch should be mindful of the concerns that certain sales may have foreign policy implications because of the capabilities of the equipment and the policies of the government purchasing the equipment.

#### CRITICAL TECHNOLOGIES

As indicated in the background section above, many of the shortcomings of the export licensing process are attributable to the scope of the controls. The controls are so broad that many more license ap-



plications are required than can be scrutinized carefully and processed efficiently. If the executive branch could be more precise about what needs to be controlled, more attention could be focused on critical items, and others could be treated more routinely or decontrolled altogether.

A 1976 report of the Defense Science Board, entitled "An Analysis of Export Control of U.S. Technology—A DOD perspective" and produced by a task force chaired by J. Fred Bucy, argued that it was possible to focus controls more narrowly on certain "critical technologies," and that the national security would be better served by so doing.

Implementation of the "Bucy Report" requires the elaboration of a list of critical technologies which is both sufficiently narrow to constitute an improvement over the present system, and sufficiently precise to be useful for guiding the decisions of individual licensing officers. The Department of Defense has been working on such a list for three years, and the Committee was hopeful that the Department would have made sufficient progress to permit the Committee to sanction the "critical technology approach" in the law. Defense Department testimony indicated that the effort is still far from complete and the results uncertain. Accordingly, the Committee did not feel prepared to mandate the implementation of the approach as the basis for export controls. Instead, the Committee officially sanctioned the study itself, directing that it go forward and that the Secretary of Defense report annually on its progress.

#### FOREIGN AVAILABILITY AND MULTILATERAL COOPERATION

The issue of what U.S. export control policy should be in the face of the availability from other free-world countries of items controlled for export from the United States has always been a difficult one. Cognizant of this problem, in 1949 the United States took the lead in setting up COCOM. In 1951 Congress passed the Mutual Defense Assistance Control Act (Battle Act), which mandated a cutoff of economic aid to countries not cooperating with U.S. export controls.

During the first decade following World War II, the U.S. technological lead and the threat of an aid cutoff enabled the United States to maintain a virtual COCOM trade embargo on the Soviet Union. As the Western European economies recovered from the war, however, historic patterns of trade with the East reasserted themselves and the embargo was broken. Ever since then, the United States has been fighting a losing battle to maintain controls on what other countries have been unwilling to control.

The Export Administration Act of 1969 authorized the President to control the export of items "regardless of their availability" from other countries. The United States maintained into the early 1970's a long "unilateral list" of items controlled by this country but not by COCOM. In a change of direction, subsequent amendments to the Act directed that the unilateral list be pared down significantly, and the Export Administration Amendments of 1977 directed that the President not control items available from other countries unless he determines that the national interest requires it.

With the increasing ability of other high technology producers to compete with the United States in the world market, the ability of the United States unilaterally to deny goods and technology to the com-

munist countries is increasingly being eroded. H.R. 4034 seeks to take account of this reality and to strengthen the presumption of the Act against unilateral controls. First, it requires the Secretary of Commerce to monitor foreign availability continuously, establishing a capability to do so in the Office of Export Administration, and to remove validated license controls on items which the Secretary determines are available in fact from foreign sources, subject to a decision by the President that, notwithstanding foreign availability, the national security requires a contrary decision. This should put an end to the current practice of investigating foreign availability only on a case-by-case basis when triggered by the submission of a license application, and should help stimulate the Secretary to remove controls before foreign competitors have entirely captured the market.

Second, the bill requires the Secretary to attempt to verify foreign availability whenever it is certified to exist and documented by one of the joint industry-government technical advisory committees established under the Act to advise the responsible departments. Too often, foreign availability is not found because it is not looked for, and it is not looked for because of an absence of incentives in the bureaucracy to look for it. The industry representatives on the technical advisory committees possess both first-hand knowledge of foreign availability and an incentive to demonstrate that it exists. Under this language the Secretary, while retaining full decision-making authority, would be forced to consider industry's evidence of foreign availability.

Third, H.R. 4034 deals with the main source of foreign availability, the COCOM countries. Until the United States can come to an agreement with the other COCOM countries to reduce the scope of the controls to a level the other countries can accept, in exchange for stricter enforcement of the controls that remain, the other countries will continue to export what the United States controls. The bill directs the President to attempt through negotiations to achieve such an agreement.

#### DUE PROCESS AND CONFIDENTIALITY

The implementation of the Export Administration program requires submission of a great deal of information that industry considers confidential business information. At the same time, the administrators of the program wield enormous power, and the system has to be open enough to provide accountability.

Historically, Congress and the Executive Branch have tended to err on the side of secrecy. The Export Administration Act of 1969 directed the Secretary of Commerce not to disclose information which the Secretary deemed confidential or with respect to which a request for confidentiality was made by the person submitting the information, unless the Secretary determined that withholding the information was contrary to the national interest. In implementing that mandate, the Secretary has simply stated, on all forms used to submit information, that all information contained thereon was deemed confidential. This has had the effect of making confidentiality apply automatically to everything. Any exception required a national interest determination by the Secretary.

Two problems have arisen in connection with these confidentiality provisions. First, the Secretary has interpreted the nondisclosure provisions as applying to the provision of information to Congress, and

has sought to deny committees of Congress access to information necessary for fulfilling their legislative and oversight responsibilities. The Committee therefore felt constrained in the Export Administration Amendments of 1977 to make it clear that nothing in the Act authorized withholding information from Congress, and to require that any information be submitted to any appropriate committee or subcommittee upon request. Despite clear legislative history to the contrary, the Secretary has chosen to interpret this provision as applying only prospectively, and therefore as not requiring provision of information with respect to license applications pending on the effective date of the 1977 amendments. Accordingly, H.R. 4034 further amends the confidentiality provisions of the Act to make clear Congress' right of access to any information required at any time under this or any previous Act pertaining to export controls.

Second, the Freedom of Information Act, as amended by the Government in the Sunshine Act, has superseded the Act's confidentiality provisions and raised questions as to what information can continue to be withheld from the public. Court suits seeking access to certain information acquired under the Act have forced the courts to rule on whether the confidentiality provisions of the Act are sufficient to exempt all information acquired under the Act from disclosure under exemption (b) (3) of the Freedom of Information Act (5 U.S.C. 552). To remove doubts about congressional intent, the administration requested that the Committee specify that the confidentiality provisions of the Act qualify under exemption (3) of the Freedom of Information Act, so that all information obtained under the Act could remain confidential. The Committee did not accede to this request. Rather, the Committee adopted an amendment specifying the types of information which could be withheld, thus bringing the Act more closely into compliance with exemption (b) (3) (B) of the Freedom of Information Act.<sup>1</sup>

#### OIL EXPORTS

The Subcommittee on International Economic Policy and Trade and the Full Committee assessed carefully the provision of the Export Administration Act limiting the export of U.S. domestic oil transported over Federal rights-of-way and subjecting any proposed such export to Congressional veto. This provision was adopted on the House floor in 1977 on a motion by Congressman McKinney, and was enacted after slight modification in conference. Unless extended, the provision would lapse on June 22, 1979.

The Committee and the Subcommittee heard testimony from Congressman McKinney, representatives of the Departments of Energy, State, and Commerce, a representative of the State of Alaska, representatives of the maritime industry, and private oil traders. Particular attention was paid to the economic and foreign policy consequences of possible swaps of Alaskan oil involving Mexico and Japan.

The Administration strongly recommended repeal of the McKinney amendment on grounds that it unduly restricts Presidential action in the national interest, and that Section 28(u) of the Mineral Lands Leasing Act of 1920, as amended by the Trans Alaska Pipeline Au-

<sup>1</sup> Subsection (3) (B) provides that information is exempted from disclosure if a statute "establishes particular criteria for withholding or refers to particular types of matters to be withheld."

thorization Act, would prohibit any export of Alaskan North Slope crude regardless of any provision in the Export Administration Act unless the President made a finding that such action did not diminish the total quantity or quality of petroleum available to the United States and that it was in the national interest to export the oil. While stressing that it does not presently propose to export any U.S.-produced oil, the Administration noted that such exports may in the future become "necessary to induce additional Alaskan and West Coast production and to improve economic efficiency" of U.S. oil production and distribution, and urged the Committee to avoid constraining considerations by the Congress and the President of such possible future exports.

On March 28, 1979, Congressman McKinney introduced H.R. 3301, to revise and extend the oil export limitation provision of the Export Administration Amendments of 1977. A slightly revised version of this bill was adopted by the Subcommittee and the Committee and is contained in H.R. 4034.

The differences between the existing oil export limitation of the Export Administration Act and revision of the existing provision contained in H.R. 4034 are summarized in the Section-by-Section Analysis in this report (see Section 107). The executive branch opposed H.R. 3301 particularly on grounds that it further narrowed the exception permitting oil swaps with adjacent countries. The Administration argued that the requirement that the President make a finding that exports would lower oil acquisition costs to refineries and prices to consumers before proposing any export to the Congress would be impossible to fulfill due to the current "entitlement" system of oil allocation and the many other factors affecting price. Such a requirement would, therefore, preclude the Executive and Congress from considering any export of oil produced in Alaska. The Administration submitted written assurance to the Chairman of the Committee that any proposed export of Alaskan oil would apply only to production in excess of the current 1.2-million barrels per day so as not to result in any net reduction in Alaskan oil currently available to the continental United States. The Administration also argued that oil swaps could potentially bring an increase in oil production in Alaska and benefit the balance of payments.

Proponents of the stronger restrictions on Alaskan oil exports proposed in Committee contended that oil exports would only enhance the profits of producers of Alaskan crude and are not needed to stimulate increased production. They cited recent increases in production and oil producers' profits and pledges made at the time of approval of the Alaskan pipeline that Alaskan oil would directly supply and benefit American consumers. More importantly, they argued, keeping Alaskan oil in the United States will stimulate refinery and West-East pipeline development, prevent further dependence on foreign oil, and demonstrate to the public that an energy crisis does indeed exist which requires domestic conservation. A majority of the Committee supported this position.

The committee notes that there is currently a shortage of domestic refinery capacity for the production of unleaded gasoline, creating excess supplies of high sulphur content, heavy crude oil, especially on the West Coast, and that there is a need for development of new refinery facilities in this area. The committee, therefore, believes that

in light of the policy embodied in section 3(3)(c) of the revised act, the Department of Commerce should, in carrying out its responsibilities under section 3(3)(c), review and revise, as necessary, those regulations concerning the export of petrochemical feedstocks that may inhibit the development of new or reconfigured refineries. For example, the Department should not interpret any part of the revised act in a manner that would preclude the export of petrochemical feedstocks, if such export were essential to the construction of a new refinery designed to produce unleaded gasoline or other light fuels, and if domestic markets for such products are not readily available or economically feasible. The Department should further take into account the need of such projects to receive letters of commitment regarding export licenses.

#### BARTER AGREEMENTS

In light of the current severe U.S. trade deficit and continued U.S. dependence upon foreign sources for oil and other vital commodities, there is renewed interest in international trade under barter arrangements. Economists have pointed out the advantages of barter for reducing the flow of dollars out of the country, (one of the factors contributing to the decline in the dollar's value) and assuring adequate supplies of foreign-produced commodities.

One of the inhibitions to greater use of barter by American firms is the possibility of subsequent U.S. government actions which would prevent such agreements from being carried out. Controls on exports for reasons of short supply, authorized by the Export Administration Act, are a major possible source of such government intervention.

H.R. 4034 explicitly authorizes the Secretary of Commerce to exclude from any future short supply controls trade pursuant to barter agreements regarding items exported to be in surplus in the United States for items expected to be scarce. The executive branch indicated to the committee that it considers the Secretary already to have this authority under general provisions of the Export Administration Act. This authority has not been used.

The bill vests in the Secretary, considerable discretion to determine which barter agreements would be eligible for such an exemption from future short supply export constraints. The effect of the barter provision of H.R. 4034, therefore, would be to direct the Secretary to give greater attention and encouragement to barter agreements. This provision is similar to one already in the act which permits exemption from future short supply controls for certain agricultural commodities purchased by foreign entities but stored in the United States.

#### EMBARGO AUTHORITY CLARIFIED.

Export licenses are one of the devices employed in implementing economic embargoes against foreign nations. No licenses are granted for commercial exports to embargoed countries. Legal authority to impose total economic embargoes of foreign nations, however, is contained in specific provisions of law or exercised under general authorities other than those of the Export Administration Act.

General authority for total economic embargoes is contained in the International Economic Emergency Powers Act (50 U.S.C. App. 1701 et seq.), subject to the procedures of the National Emergencies Act

(50 U.S.C. 1641). Provisions specifically authorizing total embargoes of individual countries (against Cuba, Vietnam, Cambodia, and North Korea) were contained in the Foreign Assistance Act of 1961 and the Export Administration Act itself and were "grandfathered" in the International Economic Emergency Powers Act.

In H.R. 4034, the committee makes explicit its intent that the Export Administration Act of 1969 does not constitute general authority to impose total economic embargoes and that any future embargoes be imposed only by specific legislative authority or under the general provisions of the International Economic Emergency Powers Act.

The Committee bill repeals the provision of the Export Administration Act of 1969, added by the Congress in 1978, specifically authorizing a total economic embargo on exports to Uganda. The Committee concluded that recent developments in Uganda make continuation of the U.S. embargo of that country inappropriate. The law provides that the embargo may be lifted if the President determines and certifies to Congress that the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights. The Committee supports action by the President to consider terminating the U.S. embargo of Uganda even before the repeal of the provision establishing the embargo.

#### MONITORING OF TECHNICAL COOPERATION AGREEMENTS

The critical technology approach is based on the view that transfers of technology or knowhow are generally more important from the point of view of U.S. national security than transfers of products. Knowhow can be transferred in many ways, not all of which are subject to export controls. Two potentially important ways of transferring knowhow are through technical cooperation agreements between U.S. firms and agencies in controlled countries, and through scientific publications, meetings, and other forms of scientific interchange. The latter method, of course, carries First-Amendment implications which make controls difficult, if not impossible.

The Export Administration Amendments of 1977 required the Secretary of Commerce to study the problem of technology transfer by these two means. This study resulted in an Administration recommendation to the Committee that the Act be amended to require reporting to the Secretary of Commerce of commercial science and technology cooperation agreements between United States entities (except educational institutions) and agencies in controlled countries, where those agreements cite an intergovernmental technical cooperation agreement and are intended to result in the export of unpublished technical data from the United States.

The committee believes that such reporting is necessary to enable the Secretary to monitor technology transfers through such agreements. Reporting, for example, would alert the Commerce Department to possible technology transfers which might take place in the future under an agreement, and would enable the Department to make clear to the U.S. firm involved that a license would be required for the transfer to take place. At the same time, the Committee believes the language recommended by the Administration is appropriately limited to avoid First-Amendment problems and to minimize the reporting burden.

## SECTION-BY-SECTION ANALYSIS

### SECTION 101—SHORT TITLE

This section cites the short title of this legislation as the "Export Administration Act Amendments of 1979."

### SECTION 102—FINDINGS

Section 102 of the bill revises the findings in section 2 of the Export Administration Act of 1969 (the act) to emphasize the importance of exports for the U.S. economy and the effect on the U.S. trading position of the availability of competing goods and technology from foreign sources, while maintaining the finding in the Act of the continuing need to restrict certain exports for national security purposes.

### SECTION 103—POLICY

Section 103 of the bill amends paragraph (2) of section 3 of the act to place the purposes of export controls in descending order of their importance—i.e., (A) national security; (B) foreign policy; and (C) short supply. It adds a new paragraph (9) to section 3 of the act, emphasizing that it is U.S. policy to apply export controls in cooperation with U.S. allies. It also adds a new paragraph (10) to section 3 of the act, emphasizing the priority of exports and the importance of limiting export controls, applying them according to basic standards of due process, and justifying them to the Congress and the public. Finally, section 103 makes minor language changes to paragraphs (5) and (6) of Policy section 3 of the Act.

### SECTION 104—EXPORT LICENSES; TYPES OF CONTROLS

Section 104(a) of the bill makes various technical amendments to the Act.

Section 104(b) of the bill adds three new sections to the act, to be numbered sections 4, 5, and 6, dealing, respectively, with types of export licenses, export controls for national security purposes, and export controls for foreign policy purposes.

#### *New Section 4—Export Licenses; Commodity Control List; Limitation on Controlling Exports*

Subsection (a) provides that the Secretary of Commerce may issue any of the following export licenses: (1) a validated license authorizing a specific export, issued pursuant to an application by the exporter; (2) a qualified general license authorizing multiple exports, issued pursuant to an application by an exporter; (3) a general license authorizing exports without application by the exporter; and (4) other licenses consistent with the Act as the Secretary deems appropriate. Any such license may be used for any destination.

Subsection (b) provides that the Secretary of Commerce shall maintain a list (the "commodity control list") of all goods and technology subject to control under the act.

Subsection (c) provides that no authority or permission to export may be required under the Act except to carry out the purposes of the Act.

Validated and general licenses are currently in use. Over 95 percent of U.S. manufactured goods exports take place under general license without the necessity of any application. Most of the remainder occur under validated licenses, which require a specific application for each transaction. While the Commerce Department has instituted limited "bulk licensing" procedures for exports to free world destinations, there is no commonly employed intermediate type of license, applicable to both communist and non-communist destinations, which permits a greater degree of control than is possible with general license procedures without the excessive paperwork required by validated license procedures.

One of the results of the lack of bulk licensing procedures is that insufficient weight is given to precedent in processing license applications. Each time an application is made to export a previously approved item to a previously approved end user for a previously approved end use, the application goes through the same review process as the previous applications did. In a system where the vast majority of applications are routinely approved, it makes no sense to put them all through the same case-by-case review process. Routinely approved items should be exportable to qualified end users, who have entered into appropriate end use agreements, without the necessity of a separate application for each individual transaction.

The qualified general license would accomplish this purpose. It is intended to apply to COCOM-related items which can be exported at the discretion of the exporting nation. These tend to be relatively low-technology items and tend to be routinely approved. The Committee expects that appropriate conditions, such as verification of product end use and quantitative limits on the exports, will continue to be applied to these licenses. Through the use of qualified general licenses with these conditions, close monitoring and constraints on exports can be maintained while bureaucratic paperwork and duplication of effort can be greatly reduced. It is the Committee's view that this type of license could be used quite widely, with positive results for both the integrity and the efficiency of national security controls.

#### *New Section 5—National Security Controls*

Subsection (a) authorizes the President, acting through the Secretary of Commerce, in consultation with the Secretary of Defense and other agencies, to control exports in order to carry out the policy set forth in section 3(2)(A) of the Act, that is, to restrict the export of goods and technology which would make a significant contribution, detrimental to United States national security, to the military potential of another country. Subsection (a) requires that revisions of such controls be published in the Federal Register and clearly identified as pertaining to national security controls under this section; and provides that denials of license applications under this section shall be clearly identified as denials for the national security purposes.

Subsection (b) provides that export control policy toward individual countries under this section are not to be determined exclusively on the basis of a country's communist or noncommunist status but also on the basis of other factors. This provision is already in the act.

Subsection (c) provides that the community control list shall contain a list of goods and technology subject to control under this section and clearly identified as such. The Secretary of Defense and other appro-



appropriate agencies are to identify goods and technology for inclusion on the list. Those items which the Secretaries of Commerce and Defense concur shall be subject to export controls under this section shall comprise the list. Disagreements between the two Secretaries shall be referred to the President. The Secretary of Commerce shall issue regulations providing for continuous review of the list, for the prompt issuance of revisions to the list, for opportunity for interested parties to submit their views during such review, and for an assessment of foreign availability during such review.

Subsection (d) states that Congress finds that export controls should be focused primarily on military critical technologies and that goods which do not transfer such technologies should be freed from such controls, to the extent possible. Subsection (d) requires the Secretary of Defense to develop a list of such technologies in accordance with certain criteria; states that such list shall become part of the commodity control list, subject to the provisions of subsection (c); and requires an annual report by the Secretary of Defense.

Subsection (e) states that Congress finds that the effectiveness and efficiency of the licensing process is severely hampered by the large volume of validated export license applications and that, accordingly, Congress encourages the use of the qualified general license to the maximum extent practicable, consistent with U.S. national security. The Secretary of Commerce is directed to limit validated license controls insofar as practicable, consistent with the national security, to items which require COCOM approval, which the United States monopolizes, or on which the United States is seeking the agreement of other suppliers to apply comparable controls. The Secretary of Commerce is further required to employ qualified general licenses insofar as practicable, consistent with the national security, for COCOM-list items which under COCOM procedures are exploratory at U.S. discretion. This subsection would permit, but does not encourage, unilateral validated license controls on non-COCOM-controlled items, such as certain unpublished technical data, at the discretion of the Secretary.

Subsection (f) requires the Secretary of Commerce to review foreign availability, from both COCOM and non-COCOM sources, on a continuing basis: to remove controls on items where the Secretary determines that foreign availability is sufficient to render U.S. controls ineffective in achieving their purpose, unless the President determines that such removal would prove detrimental to the national security; and, subject to the same exception, to approve any export license application where the Secretary determines that foreign availability would render denial ineffective in achieving its objective. Subsection (f) also provides for negotiation by the Secretary of State to attempt to remove foreign availability before the Secretary of Commerce makes a foreign availability determination under this subsection, and requires that the Secretary of Commerce establish a capability within the Office of Export Administration to monitor foreign availability. In any case under paragraphs (1) and (2) in which the President determines that export controls must be maintained notwithstanding foreign availability, the Secretary must publish that determination and a concise statement of its basis and estimated economic impact.

The Act, as amended in 1977, states that the President shall not impose export controls on items "which he determines are available without restriction from sources outside the United States in significant quantity and comparable in quality" to those controlled by the United States. This language has created problems for two reasons. First, since all items on the COCOM list are restricted in theory, the executive branch has continued to operate on the assumption that no such items are available "without restriction," even though other COCOM members may not control them in fact. Second, the words "significant in quantity and comparable in quality" have given rise to fruitless debates over how much availability is "significant" and what kind of quality is "comparable." The executive branch has sometimes defined these terms so narrowly that a finding of foreign availability has been virtually impossible to make.

Subsection (f) seeks to clarify congressional intent by creating a test of availability "in fact" such that the control "would be ineffective" in achieving its purpose of denying the proposed recipient the capability in question. Under this language, the Secretary could no longer use the mere existence of formal COCOM controls as a reason to maintain a control or deny a license; the Secretary would have to make a determination of whether the item in question would be available in fact from other sources. Furthermore, under this language, the fact that a foreign product was not precisely identical to a U.S. product, or that its quantity was not deemed significant in some undefined sense, would not be sufficient; the test, on a control-by-control and license-by-license basis, is whether foreign availability is sufficient to defeat the purpose of the U.S. control.

Subsection (g) provides that the Secretary may, where appropriate, establish an indexing system providing for annual increases in the performance levels of goods and technology subject to license requirements under this section, in order that such requirements may be periodically removed as such goods and technology become obsolete. This provision is particularly applicable to computers.

Subsection (h) extends the existing authorization in the Act for the appointment of industry-government technical advisory committees (TACs) under essentially the same terms as are now provided in the Act. Such committees are to advise the Secretary of Commerce, the Secretary of Defense, and other agencies exercising authority under the Act with respect to goods and technology subject to controls under this section or being considered for such controls. Whenever a technical advisory committee certifies and provides adequate documentation that foreign availability of goods or technology exists, the Secretary is to take steps to verify that availability. Upon that verification, the Secretary must remove validated license controls on the goods or technology, unless the President determines that the absence of such controls would prove detrimental to the national security, in which case the Secretary shall publish that determination together with a concise statement of its basis and estimated economic impact.

Subsection (i) requires the President to enter into negotiations with members of COCOM with a view toward reaching agreement on publishing the COCOM list and procedures, holding periodic, high-level meetings of COCOM-member governments, reducing the scope of the COCOM controls, and establishing more effective enforcement proce-

dures. It requires the President to report on the negotiations, and provides that COCOM-controlled items exported to COCOM countries do not require U.S. re-export permits for further export from such countries.

The committee feels that the main problem with COCOM is that the United States has sought to impose broader controls on COCOM than the other members have been willing to accept and enforce, and has then disregarded evasions of the controls by the other members out of fear that attempts to enforce the controls would undermine the COCOM system. Accordingly, the committee feels that the President should offer a reduction in the scope of the controls in exchange for more effective enforcement procedures. Publication of the list and procedures would make the rules of the game available for all to see, and would help allay suspicions that the various parties to the agreement selectively interpret the rules to their own advantage. High-level policy guidance is necessary if COCOM is to more accurately reflect changes in overall East-West trade policy. The elimination or re-export permits would put an end to the costly "dual licensing" system currently in effect whereby applications must be made both to the United States and to COCOM (where the United States has a veto) for permission to re-export U.S. goods and technology.

Subsection (j) requires reporting to the Secretary of Commerce of commercial science and technology cooperation agreements between United States firms, organizations or other entities (except educational institutions), and government agencies in controlled countries, where those agreements cite an intergovernmental technical cooperation agreement and are intended to result in the export of unpublished technical data from the U.S.

Subsection (k) authorizes the Secretary of State to continue to be the lead agency with respect to U.S. participation in COCOM. This provision incorporates into the Export Administration Act an authority heretofore exercised under the Battle Act.

#### *New Section 6.—Foreign Policy Controls*

Subsection (a) authorizes the President, acting through the Secretary of Commerce, in consultation with the Secretary of State and other agencies, to control exports in order to carry out the foreign policy purposes of the Act; requires that revisions of such controls be published in the Federal Register and clearly cited as pertaining to foreign policy controls; provides that denials of license applications under this section must be clearly identified as denials for foreign policy purposes; and makes clear that the Secretary of State has the right to review any export license application under this section and to appeal any decision of the Secretary of Commerce to the President.

Subsection (b) provides criteria that the President must consider in determining whether to impose export controls under this section. These criteria include: (1) the likely effectiveness of the controls, especially considering foreign availability; (2) the compatibility of the controls with U.S. foreign policy objectives, including the effort to counter international terrorism, and with overall U.S. policy toward the country to which the controls are directed; (3) the likely effects of the proposed controls on U.S. export performance and international

competitiveness and on U.S. companies and their employees and communities; and (4) the ability of the U.S. Government to enforce the controls effectively. Having considered these criteria, the President is not strictly bound by them.

Subsection (c) provides that the Secretary of Commerce shall consult with such affected industries as the secretary considers appropriate before imposing foreign policy controls.

Subsection (d) provides that, before resorting to foreign policy controls, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other means.

Subsection (e) requires the President in every possible instance to consult with Congress before imposing any new foreign policy control and to immediately report the imposition of a new control to Congress. It provides for congressional disapproval of the control by concurrent resolution.

Subsection (f) provides that this section does not authorize export controls on food, medicine or medical supplies; states that this provision shall not be construed to prohibit the President from imposing restrictions on the export of food, medicine or medical supplies under the International Economic Emergency Powers Act; and states that it is the intent of Congress that controls not be imposed on exports the principal effect of which would be to help meet basic human needs.

Subsection (g) provides that this section does not authorize the imposition of a total trade embargo, but that this provision shall not be construed to prohibit the President from imposing a trade embargo under the International Emergency Economic Powers Act.

Subsection (h) requires the President to take all feasible steps to secure the cooperation of foreign suppliers in controlling the availability of goods subject to U.S. foreign policy controls.

Subsection (i) provides that the limitations contained in subsections (b), (c), (d), (f), (g), and (h) shall not apply in the case of foreign policy controls imposed pursuant to treaty or other international obligations.

Subsection (j) provides that subsections (f) and (g) shall not apply to controls in effect on the effective date of these amendments.

Subsection (k) provides that the commodity control list shall contain a list of goods and technology subject to controls under this section and clearly identified as such; that the Secretary of State shall identify such goods and technology, with the concurrence of the Secretary of Commerce; and that the Secretary of Commerce shall issue regulations providing for periodic revision of the list.

Section 104(c) of the bill adds a new section 10 to the act setting forth procedures for export license applications.

*New Section 10—Procedures for Processing Validated and Qualified General License Applications*

One of the most serious export licensing problems is delay. This problem has several causes. One is the inherent complexity of many licensing decisions. Another is the differing perspectives of the various agencies involved in the process, producing interagency disagreements which are sometimes difficult to reconcile. A third is the volume of applications submitted; licensing officers are tempted to put aside the troublesome cases in order to keep up with the flow of routine ones. A fourth is the fact that applications are often farmed out to tech-

nical experts and other officials for whom the applications constitute an intrusion upon normal duties, and who therefore do not accord the applications high priority. Finally, there are allegations by industry that applications are sometimes deliberately held up by licensing officers who may simply be personally opposed to the proposed export.

The root of the problem is that the licensing system lacks incentives for processing applications quickly. The factors mentioned above constitute incentives for delay. Delay postpones the necessity of making difficult decisions, avoids bringing interagency disagreements to a head, and provides a convenient way of stopping an export by pigeonholing the application, without taking the responsibility for approval or denial.

Another important aspect of this problem is that delay by the United States on COCOM exception requests encourages circumvention of COCOM by the other members, adding to foreign availability of items controlled by the United States.

The new section 10 of the Act added by this bill would attack the delay problem by creating incentives for action. Section 10 provides that (1) if an agency does not render an opinion on an application within a definite amount of time, it forfeits its right to be heard; and (2) if a decision cannot be reached on an application at lower bureaucratic levels within a definite amount of time, the application must be referred to higher levels. The Committee believes that these provisions will stimulate the various agencies involved in licensing determinations to institute procedures to expedite the processing of applications in order to avoid the costs imposed by this section for not doing so.

Dramatic improvements can occur when the necessary administrative reforms are instituted. Such reforms have enabled the Department of Defense to increase the percentage of its cases processed within 30 days from 72 percent for the first 9 months of 1978 to 98 percent for the last 3 months of 1978. During the prior period, the longest case required 165 days; during the latter period, 35 days. This section will require the institution of such reforms in all agencies concerned.

It is important to note that section 10 does not alter the role of any agency in the licensing process. All agencies retain the right to review license applications and to appeal, ultimately to the President, any licensing decision with which they disagree. In particular, the special rights of the Department of Defense for direct appeal to the President are preserved in this section.

It is also important to note that the time periods are extremely liberal. Whereas the Act now states that it is the intent of Congress that applications be decided within 90 days, under the proposed section 10 the most difficult cases could take as much as 180 days, exclusive of COCOM review. Section 10 does not preclude any agency from participating in a licensing decision, nor does it require undue haste in processing license applications. The section does, however, in subsection (1), provide for the first time for enforcement of the deadlines.

The specific provisions of section 10 are described below.

Subsection (a) provides that the Secretary of Commerce has general responsibility for making licensing determinations, subject to the provisions of this section for interagency consultation and for appeal

by other agencies of the Secretary's decisions, and provides that license applications may not be denied by an official holding a rank lower than Deputy Assistant Secretary. The purpose of the latter provision is to avoid routine denials at the lower bureaucratic levels. This accords with the spirit of the bill that the presumption should be in favor of exports, and that exports should be restricted only in exceptional circumstances. The Committee feels that if an export is important enough to deny, it is important enough for review by officials with policymaking authorities and responsibilities.

Subsection (b) provides that it is the intent of Congress that licensing determinations be made to the maximum extent possible by the Secretary of Commerce, without interagency referral, but that any agency may request to review any type of license application and the Secretary shall submit any license application of that type to that agency.

Subsection (c) provides a period of 10 days for initial screening of license applications by the official designated by the Secretary of Commerce to carry out functions under this Act and for notifying the applicant of the procedures involved in this section and of other specified information.

Subsection (d) requires that, within 30 days of receipt of an application, the designated official shall either issue or deny the license or submit the application to other agencies for review and, in the latter case, provide the applicant with an opportunity to review for accuracy the documentation provided to the other agencies.

Subsection (e) provides that the other agencies have 30 days to make their recommendations to the designated official, and that any such agency which does not submit its recommendations within 30 days shall be deemed to have no objection to approval, unless the head of such agency requests more time, in which case a further 30 days is provided.

Subsection (f) provides that the designated official has 20 days to either reach a decision on the application or, if unable to reach a decision, to refer the application to the Secretary of Commerce. In the case of a decision, the license shall be issued or denied 10 days after the decision unless an agency which submitted a recommendation to the designated official appeals the decision to the Secretary of Commerce prior to the end of the 10 day period. The designated official shall fully inform the applicant, within five days of any denial, of the statutory basis for the denial, the policies of the Act that formed the basis of the denial, the specific circumstances that led to the denial, and the applicant's right to appeal the denial to the Secretary. In the case of referral or appeal to the Secretary, the designated official shall inform the applicant of the particular problems with the application and accord the applicant an opportunity to respond to them.

Subsection (g) provides that the Secretary of Commerce shall approve or disapprove any application referred or appealed to the Secretary within 20 days of such referral or appeal, and shall formally issue or deny the license 10 days later unless an agency which had appealed to the Secretary under subsection (f) or, in the case of a referral, any agency which reviewed the application, appeals to the President prior to the end of the 10 day period. The applicant is to be notified, as specified in subsection (f), of actions taken under

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this subsection. Subsection (g) also provides that the Secretary may not delegate the authority of this subsection to any official holding a rank lower than Deputy Assistant Secretary.

Subsection (h) provides that in the case of an appeal to the President, the President has 30 days to reach a decision on the application, or the decision of the Secretary of Commerce shall be final.

Subsection (i) provides special procedures for review of license applications by the Secretary of Defense. The Secretary may review any proposed export to any destination to which exports are controlled for national security purposes and, within 30 days of receipt of the application from the Department of Commerce shall, on the basis of the national security purposes of the Act, either recommend to the President that the application be disapproved, or recommend to the Department of Commerce that the license be approved or approved subject to specified conditions. In the case of a recommendation of disapproval to the President, the President has 30 days to sustain or overrule the recommendation.

Subsection (j) provides an additional 60 days for review of license applications by COCOM where necessary. In the absence of COCOM action within 60 days, the license shall be issued. This subsection also provides that the Secretary of State has 60 days, in consultation with other agencies, to make a determination on license applications submitted to the United States by other COCOM members.

The purpose of subsection (j) is to ensure that COCOM deliberations do not negate the effectiveness of the time deadlines imposed elsewhere in this section, and to require the U.S. government to make a decision when COCOM fails to act within a reasonable amount of time. COCOM usually processes U.S. exception requests expeditiously. However, there are cases where COCOM countries hold up U.S. exception requests for long periods of time even though other COCOM members are known to be exporting similar items, and where COCOM countries hold U.S. exception requests hostage to U.S. approval of their exception requests. Since any application referred to COCOM has already been approved by the U.S. government, there is no reason not to issue the license after a reasonable period of time if other COCOM countries engage in such tactics. This is fully consistent with the COCOM agreement. Subsection (f) makes the U.S. government subject to the same 60-day limitations in processing other countries' exception requests.

Subsection (k) provides that the Secretary of Commerce may extend any time period prescribed in this section, for applications of exceptional importance and complexity, in order to provide additional time for negotiation to modify the application, and that the Secretary shall notify the Congress and the applicant of the extension and the reasons therefor. This subsection should be interpreted as providing that the period between the time that an application is returned to the applicant for renegotiation and modification, and the time that the application is revised, shall not be included in calculating the time periods prescribed by this section.

Subsection (l) requires the Secretary of Commerce to establish procedures for any applicant to appeal to the Secretary the denial of an export license application; and provides that, in any case in which any action required by this section is not taken within the time period

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established, the applicant may file a petition with the Secretary, who shall then have 30 days to correct the situation and to notify the applicant that the processing of the application has been brought into conformity with the requirements of this section, or the applicant may bring an action in United States district court to require compliance with such requirements.

Subsection (m) requires all agencies involved in the licensing process to keep accurate records.

#### SECTION 105—SHORT SUPPLY LICENSE ALLOCATION

Section 105 of the bill amends Section 7 of the Act, as redesignated by section 104(a) of the bill, to provide that one of the factors on which export licenses shall be allocated in the case of export controls for short supply purposes is the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

The United States continues to export to foreign customers of long standing certain goods which are in short supply in the United States, such as refined petroleum products. Existing law gives the Secretary of Commerce broad discretion in allocating the licenses under which export quotas on such goods are maintained. Such license applications assure equitable distribution of exports to foreign customers. Some foreign countries, in return, have been particularly reliable and equitable in continuing to supply the United States with other scarce goods even when they might have charged higher prices in the United States or other markets. The Dominican Republic, for example, the major foreign supplier of sugar to the United States in the Caribbean, continued to supply sugar to the United States at historical prices even when world prices rose dramatically in the mid-1970's. Canada supplied the United States with zinc at equitable prices during the 1974 shortage of that raw material. Other countries, by contrast, have taken unfair advantage of U.S. shortages. As one example, Mexico, which prohibits imports of U.S. tomatoes and some other fruits and vegetables, has engaged in questionable market practices, such as price cutting when U.S. domestic supplies were plentiful, and raising prices to "all that the market will bear" when fruits and vegetables have been scarce in the United States. The committee believes that such practices by foreign suppliers should be taken into account by the Secretary in allocating licenses for exports of items the United States continues to supply to foreign nations despite our own needs and shortages.

#### SECTION 106—MONITORING OF EXPORTS

Section 106 of the bill adds a provision to redesignated section 7 of the Act to require that monitoring of exports shall commence early enough to assure that there is adequate information to determine whether export controls are needed for short supply purposes as authorized by the act.

#### SECTION 107—DOMESTIC CRUDE OIL

Section 107 of the bill amends subsection (1) of redesignated Section 7 of the act to strengthen the prohibitions on the export of Alaskan oil and to provide that, notwithstanding such prohibitions, such oil



may be exported pursuant to a bilateral international oil supply agreement entered into prior to May 1, 1979.

Existing subsection (1) prohibits the export of oil transported over Federal rights-of-way granted pursuant to section 28 of the Mineral Leasing Act, including Alaskan North Slope oil, except for crude oil exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state.

It is effective only for the two-year period beginning on the date of enactment of the Export Administration Amendments of 1977 (June 22, 1977). Crude oil subject to this existing provision can be exported if the President makes various findings and, within 60 calendar days after the President has reported those findings to the Congress, neither House has rejected the proposed export by passing a resolution of disapproval.

Section 107 of the bill extends the existing subsection (1) through September 30, 1983, and amends it by clarifying that the exemption for exchanges with adjacent foreign states apply only if the oil exchanged is refined and consumed in the adjacent foreign state, and if the exchange will result in lower oil acquisition prices for refineries and in lower prices for consumers in the United States. It makes minor changes in the existing findings required to be made by the President in proposing exports to Congress, and adds a new requirement that such proposed exports reduce wholesale and retail prices of refined products. The one-house veto in existing law is changed to a requirement of concurrent resolution of approval before oil can be exported. Findings of lower acquisition costs for refineries and prices for consumers are required to be audited and verified by the General Accounting Office at least semiannually.

Section 107 of the bill also adds to existing subsection (1) a new paragraph (3) providing an exemption from the restriction on the export of oil in order to fulfill a bilateral international oil supply agreement entered into by the United States prior to May 1, 1979. The only such agreement in effect on that date was the agreement between the U.S. and Israel (entered into in conjunction with the March 26, 1979, Treaty of Peace Between Israel and Egypt) to conclude a subsequent agreement under which the United States will supply oil to Israel for a 15-year period (including the 5-year period covered by the U.S.-Israel oil arrangement of September 1, 1975). The committee intends that these interrelated arrangements and agreements between the U.S. and Israel be covered in their entirety by this exemption.

The committee notes that the International Energy Agency emergency oil sharing agreement commits the United States to share oil with other nations under certain circumstances. The committee was assured, however, that the United States could fulfill that commitment with oil from sources other than the North Slope of Alaska. The committee's exclusion of the IEA oil sharing agreement from the international agreement exception to the oil export restriction in subsection (1) should not be construed in any way as weakening or countermanding the U.S. commitment under the IEA oil sharing arrangement. Fulfillment of that commitment, however, should not require export of Alaskan oil.

SECTION 108—UGANDA

Section 108 of the bill amends redesignated section 7 of the act, to repeal the prohibition on exports to Uganda imposed by subsection (m) of that section.

SECTION 109—BARTER AGREEMENTS

Section 109 of the bill adds a new subsection to redesignated section 7 of the act which provides that exports pursuant to barter agreements are to be exempted from short supply controls and from certain controls imposed under the International Emergency Economic Powers Act if the Secretary of Commerce finds that, during the period of the barter agreement, the quantity of the goods to be exported will be in excess of demand in the domestic economy and the quantity of goods to be imported will be less than required to supplement domestic production, and that the parties to the agreement have demonstrated that they intend and have the capability to carry out the agreement.

SECTION 110—UNPROCESSED RED CEDAR

Section 110 of the bill provides that the Secretary shall require a valid license under redesignated section 7 of the act for the export of unprocessed western red cedar logs harvested from public lands, and requires phase-out of exports of such logs over a three-year period.

Existing Federal and some State laws already prohibit export of unprocessed logs from Federal and certain State lands. Such restrictions are in response to excessive foreign demand for unprocessed logs and rapidly increasing log prices to which foreign demand contributes. While most timber resources can be replaced through reforestation, it is impractical and uneconomic to replace western red cedar, which requires 200-300 years or more to mature for commercial use. It is estimated that only about a 10-year supply of this increasingly rare tree remains in the United States if current rates of cutting and exporting continue. In view of the nonrenewability of this natural resource, and the small proportion (less than 1 percent) of total log exports accounted for by western red cedar cut and exported from Federal or State lands, the committee decided to mandate the gradual phase-out of exports of western red cedar from Federal and State lands under the short-supply licensing and control authorities of the act. For purposes of this provision, it is the committee's intent that Federal and State lands not include lands held in trust by any Federal or State official or agency for a State or federally recognized Indian tribe or for any member of such tribe.

The committee further intends that the rules and regulations promulgated by the Department to carry out the terms of this section shall, to the extent practical, insure that third-party arrangements, substitution, and similar practices involving the sale, harvesting, transfer, and use of western red cedar logs are not used to evade the purposes of this section.

The committee stresses that all aspects of this section apply only to logs harvested from State and Federal (excluding Indian lands), and do not apply in any way to logs harvested from private lands.

SECTION 111.—CIVIL AIRCRAFT EQUIPMENT

Section 111 of the bill provides that any product which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and which is to be exported to a country other than a controlled country as described in section 620(f) of the Foreign Assistance Act of 1961, shall be subject to export controls under the Export Administration Act of 1969 rather than section 38(b)(2) of the Arms Export Control Act.

In providing in this section that civil aircraft equipment be subject to export controls under the Export Administration Act process rather than the Arms Export Control Act, the Committee intends that the Department of Defense should nevertheless continue to review license applications for such exports since they may have important military applications. The Committee notes, however, that all FAA certified equipment integrated in civilian aircraft is so certified because it contributes to in-flight safety. That being the case, it is appropriate that it be subject to the flexible, case-by-case controls of the Export Administration Act of 1969, rather than the more stringent controls imposed by legislation and Executive determination under the Arms Export Control Act.

SECTION 112.—NONPROLIFERATION CONTROLS

Section 112 of the bill provides that nothing in sections 5 or 6 of the act, as added by section 104(b) of the bill, shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978. With respect to any export license application which under such procedures, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of the act, as added by section 104(c) of the bill, shall apply only to the extent that they are consistent with such procedures, except that the applicant shall have the rights of appeal, petition and court action provided by subsection (1) of section 10 if the processing of an application is not completed within 180 days.

Section 309(c) of the Nuclear Non-Proliferation Act of 1978 required the President to publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Nuclear Regulatory Commission under the Non-Proliferation Act, (i.e., items controlled under the Export Administration Act) which could be of significance for nuclear explosive purposes. These procedures were published on June 9, 1978. Since export controls for nonproliferation purposes are not clearly identifiable as either national security or foreign policy controls, and since their effectiveness might be hampered by compliance with certain provisions of section 5 or 6 of the act as added by the bill, section 112 of the bill in essence exempts the procedures already published by the President, pursuant to section 309(c) of the Non-Proliferation Act, from most of the requirements of sections 5 and 6 of the act. However, the overall 180-day limit for processing license applications, and the rights of appeal, petition, and court action established by section (1) in the case of denials or failure to complete processing of the application

within 180 days still apply. Those nonproliferation cases which, under established procedures, are not referred to the interagency Subgroup on Nuclear Export Coordination, remain subject to all the requirements of section 10 of the act.

It is the intent of the committee that all applications for items having potential nuclear significance based upon the procedures and determinations under section 309(c) continue to be submitted to the Secretary of Commerce, and that the formal issuance or denial of the license be done by the Secretary of Commerce.

#### SECTION 113—VIOLATIONS

Section 113 of the bill amends section 11 of the act, as redesignated by section 104(a) of the bill, to eliminate the different penalties currently prescribed for first and second offenses, and to increase certain criminal penalties for violations.

#### SECTION 114—CONFIDENTIALITY

Section 114 of the bill amends section 12(c) of the act, as redesignated by section 104(a) of the bill, by striking out the requirement that the Secretary of Commerce maintain the confidentiality of any information obtained under the act which "is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information." This language is replaced with a requirement that the Secretary maintain the confidentiality of any information obtained under the act which "would reveal the parties to an export or re-export transaction, the type of good or technology being exported or re-exported, or the destination, end use, quantity, value, or price of such good or technology." Section 114 also amends those provisions of section 12(c) of the act regarding the furnishing of information to Congress to clarify the intent of Congress that those provisions apply retroactively to "all information obtained at any time under this act or previous acts regarding the control of exports."

The Department of Commerce had requested that the committee specify that information obtained under the act is exempt from disclosure under section 552(b)(3)(B) of title 5, United States Code. While the committee felt it would not be wise to grant that request, it is the committee's intent in this provision to meet the requirements of the Freedom of Information Act by specifying the particular types of matters which may be withheld from disclosure. Section 114 of the bill further provides, however, that this provision shall not be construed to require the withholding of any type of information which, immediately before the effective date of these amendments, is not being withheld from disclosure. The committee specifically intends that the information currently published in the daily list of export licenses granted—that is, the type of commodity, value of the transaction, and country of destination—shall continue to be made available to the public.

As stipulated in the savings provisions of the bill, section 123, the revisions made by this section are not intended to affect or apply to any pending suit or other judicial proceedings under the Freedom of Information Act or the Export Administration Act.

SECTION 115—REPORT TO CONGRESS

Section 115 of the bill amends section 14 of the act, as redesignated by section 104(a) of the bill, to require an annual, rather than semi-annual, report by the Secretary of Commerce on the administration of the act, to require timely submission of such report, and to conform the subjects on which information is required to be submitted in the report to the amendments made by the bill.

SECTION 116—RULES AND REGULATIONS

Section 116 of the bill creates a new section 15 of the act providing regulatory authority to the President and the Secretary of Commerce for carrying out the provisions of the act.

SECTION 117—DEFINITIONS

Section 117 of the bill amends section 16 of the act, as redesignated by section 104(a) of the bill, to provide a definition of "Secretary" to mean the Secretary of Commerce.

SECTION 118—EFFECT ON OTHER ACTS

Section 118 of the bill makes a technical amendment to section 17 of the act, as redesignated by section 104(a) of the bill, and provides that the Mutual Defense Assistance Control Act of 1951 is superseded. The operative provisions of that act are incorporated in amendments made by the bill.

SECTION 119—AUTHORIZATION OF APPROPRIATIONS

Section 119 of the bill amends section 18 of the act, as redesignated by section 104(a) of the bill, to prohibit appropriations to the Department of Commerce for carrying out this act without prior authorization; to authorize \$7,070,000 for the Department of Commerce for fiscal year 1980 and \$7,777,000 for fiscal year 1981; and to provide that the Department of State may use funds appropriated to that Department for fiscal year 1980 to carry out the provisions of section 5(c) of the act.

SECTION 120—TERMINATION DATE

Section 120 of the bill amends section 20 of the Act, as redesignated by section 104(a) of the bill, to extend the authority granted by the Act until September 30, 1983.

SECTION 121—TECHNICAL AMENDMENTS

Section 121 makes technical amendments to the Export Administration Act of 1969.

SECTION 122—TECHNICAL AMENDMENTS TO OTHER ACTS

Section 122 makes technical amendments to other Acts.

SECTION 123—SAVINGS PROVISIONS

Section 123 continues in effect administrative actions taken under the Export Administration Act of 1969 or the Export Control Act of 1949 until they are superseded under the bill or the amendments made by the bill, and provides that administrative and judicial proceedings and license applications pending at the time the bill takes effect, including judicial proceedings under section 552 of title 5, United States Code (the Freedom of Information Act), shall not be affected by the bill.

SECTION 124—EFFECTIVE DATE

Section 124 provides that the bill shall take effect on October 1, 1979, except that the amendments made by sections 107 and 108 shall take effect upon enactment.

TITLE II—INTERNATIONAL INVESTMENT SURVEY ACT

SECTION 201—AUTHORIZATION OF APPROPRIATIONS FOR THE  
INTERNATIONAL INVESTMENT SURVEY ACT

Section 201 of the bill amends section 9 of the International Investment Survey Act to authorize appropriations totalling \$8.9 million for fiscal years 1980 and 1981.

In authorizing these funds, the committee takes no position on the request of the Department of Commerce to delay implementing the next 5-year benchmark survey of outward direct investment in order to undertake certain special surveys and studies mandated by the International Investment Survey Act. The Subcommittee on International Economic Policy and Trade intends to examine this request further through consultations with Department officials and possible additional hearings. Resolution of this question, however, does not affect the level of funding provided in this legislation.

REQUIRED REPORTS SECTION

COST ESTIMATE

The committee estimates that, assuming the full appropriation of the amounts authorized in this bill, the total budget authority required to carry out the provisions of H.R. 4034 will be \$11.9 million for fiscal year 1980 and \$12.9 million for fiscal year 1981. The fiscal year allocation of the total cost is set forth in the Congressional Budget Office estimate below. The Committee agrees with the projected cost estimated of the Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 4034 will have no identifiable inflationary impact. In fact, the authority for controls on products in short supply will serve to dampen inflation caused by scarce supplies of a particular product.

STATEMENTS REQUIRED BY CLAUSE 2(1)(3) OF HOUSE RULE XI

(a) *Oversight findings and recommendations*

H.R. 4034 is the result of two years of extensive hearings and oversight activity of the Subcommittee on International Economic Policy

and Trade. Oversight activity included a staff mission to investigate the operating procedures of COCOM, the coordinating committee which facilitates multilateral controls for national security purposes. The Committee also considered several studies required under the Export Administration Amendments of 1977, including the report pursuant to section 114 on Simplification of Export Administration Regulations, the Special report under section 117 on Multilateral Export Controls, and the report under section 103 on Review of U.S. Policy Toward Individual Countries.

*(b) Budget authority*

The enactment of H.R. 4034 will create no new budget authority.

*(c) Committee on Government Operations summary*

No oversight findings and recommendations which relate the Export Administration Act of 1969 to this legislation have been received from the Committee on Government Operations under clause 4(c) of rule X of the Rules of the House.

The Subcommittee on Commerce, Consumer, and Monetary Affairs of the Committee on Government Operations held oversight hearings in 1978 on certain aspects of the implementation of the International Investment Survey Act. The Subcommittee on International Economic Policy and Trade received written testimony and recommendations from the Chairman of the Subcommittee on Commerce, Consumer, and Monetary Affairs, the Honorable Benjamin S. Rosenthal, which were helpful to the Committee on Foreign Affairs in taking action on Title II of H.R. 4034, authorizing funds for the International Investment Survey Act.

*(d) Congressional Budget Office cost estimate*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 14, 1979.

1. Bill No.: H.R. 4034.
2. Bill title: Export Administration Act Amendments of 1979.
3. Bill status: As ordered reported by the House Committee on Foreign Affairs, May 10, 1979.
4. Bill purpose:

Title I:

Title I of this bill sets forth the policy of the United States concerning export controls. The Secretary of Commerce is authorized to issue various export licenses, based on the criteria, procedures and restrictions prescribed in the bill. The bill authorizes appropriations of \$7.1 million in fiscal year 1980 and \$7.8 million in fiscal year 1981 for these activities. In addition, it authorizes the appropriations of such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

The authorization level for fiscal years 1978 and 1979 combined was \$14 million. The authorization level specified in the bill for fiscal year 1980 is identical to the President's budget request for fiscal year 1980.

Title II:

Title II authorizes appropriations of \$4.4 million for fiscal year 1980 and \$4.5 million for fiscal year 1981 to carry out the provi-

sions of the International Investment Survey Act of 1976. The authorization level for fiscal year 1979 was \$4 million. Fiscal year 1979 appropriations to date for this purpose are \$3.9 million.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1980	1981	1982	1983	1984
Authorization level:					
Function 150.....	1.6	1.7			
Function 370.....	9.9	10.6			
Function 920.....	.4	.6			
Total.....	11.9	12.9			
Estimated outlays:					
Function 150.....	1.3	1.6	0.3	0.1	
Function 370.....	9.1	10.3	.9	.2	
Function 920.....	.4	.6			
Total.....	10.8	12.5	1.2	.3	

6. Basis of estimate. For the purpose of this estimate, it is assumed that the full amounts authorized in the bill for fiscal years 1980 and 1981 will be appropriated prior to the beginning of each fiscal year. Outlays reflect historical spendout rates for these activities. In addition to the authorization levels specified in Title I, the \$0.4 million for fiscal year 1980 and \$0.6 million for fiscal year 1981 reflects increases in employee pay and benefits as authorized in the bill. This figure was estimated at 5.5 percent of the fiscal year 1980 and 7.6 percent of the fiscal year 1981 authorized pay and benefit levels.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 3, 1979, the Congressional Budget Office prepared a cost estimate on S. 758, the Senate version of authorizations under the International Investment Survey Act of 1976. The budget authority and outlays are identical to Title II in this bill.

9. Estimate prepared by Mary Maginniss.

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

EXPORT ADMINISTRATION ACT OF 1969

\* \* \* \* \*

[FINDINGS

[SEC. 2. The Congress makes the following findings:

[(1) The availability of certain materials at home and abroad varies so that the quantity and composition of the United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an im-



portant bearing upon fulfillment of the foreign policy of the United States.

【(2) The unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States.

【(3) The unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments, particularly when export restrictions applied by the United States are more extensive than export restrictions imposed by countries with which the United States has defense treaty commitments.<sup>2</sup>

【(4) The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

【(5) <sup>3</sup> Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.】

#### FINDINGS

##### *SEC. 2. The Congress makes the following findings:*

(1) *Exports are important to the economic well-being of the United States.*

(2) *A large United States trade deficit weakens the value of the United States dollar, intensifies inflationary pressures in the domestic economy, and heightens instability in the world economy.*

(3) *Poor export performance is an important factor contributing to a United States trade deficit.*

(4) *It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nations economy.*

(5) *The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.*

(6) *The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.*

(7) *The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.*

(8) *Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with*

*free international trade, and retard the growth and development of nations.*

*(9) The export of goods or technology without regard to whether such export makes a significant contribution to the military potential of individual countries may adversely affect the national security of the United States.*

*(10) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combinations of countries which would be detrimental to the national security of the United States.*

#### DECLARATION OF POLICY

##### SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

[(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities, and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.]

*(2) It is the policy of the United States to use export controls to the extent necessary (A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States; (B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its international responsibilities; and (C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.*

\* \* \* \* \*

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person, (B) to encourage and, in specified cases, to require United States persons engaged in the export of [articles, materials, supplies, or information] *goods, technology, or other information* to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or

imposed by any foreign country against a country friendly to the United States or against any United States person, (C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular [articles, materials, or supplies, including technical data or other information,] *goods, technology, or other information* to the United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and qualified experts from private industry.

\* \* \* \* \*

(9) *It is the policy of the United States to cooperate with other nations with which the United States has defense treaty commitments in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries, which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments.*

(10) *It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are essential to achieve fundamental national security, foreign policy, or short supply objectives, (B) will clearly achieve such objectives, and (C) are administered consistent with basic standards of due process. It is also the policy of the United States that such controls shall not be retained unless their efficacy is annually established in detailed reports available to both the Congress and to the public, to the maximum extent consistent with the national security and foreign policy of the United States.*

#### EXPORT LICENSES; COMMODITY CONTROL LIST; LIMITATION ON CONTROLLING EXPORTS

**SEC. 4. (a) TYPES OF LICENSES.**—*The Secretary may, in accordance with the provisions of this Act, issue any of the following export licenses:*

(1) *A validated license, which shall be a document issued pursuant to an application by an exporter authorizing a specific export or, under procedures established by the Secretary, a group of exports, to any destinations.*

(2) *A qualified general license, which shall be a document issued pursuant to an application by the exporter authorizing the export to any destination, without specific application by the exporter for each such export, of a category of goods or technology, under such conditions as may be imposed by the Secretary.*

(3) *A general license, which shall be a standing authorization to export, without application by the exporter, a category of goods or technology, subject to such conditions as may be set forth in the license.*

(4) *Such other licenses, consistent with this subsection and this Act, as the Secretary considers necessary for the effective and efficient implementation of this Act.*

(b) *COMMODITY CONTROL LIST.*—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the “commodity control list”) consisting of any goods or technology subject to export controls under this Act.

(c) *RIGHT OF EXPORT.*—No authority or permission to export may be required under this Act, or under any rules or regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

**[CONSULTATION AND STANDARDS**

**[SEC. 5.** (a) In determining what shall be controlled or monitored under this Act, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall fully cooperate in rendering such advice and information. Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations. In addition, the Secretary of Commerce shall consult with the Federal Energy Administration to determine whether monitoring under section 4 of this Act is warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

**[**(b) (1) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provision shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

**[**(2) Upon imposing quantitative restrictions on exports of any article, material, or supply to carry out the policy stated in section 3(2) (A) of this Act, the Secretary of Commerce shall include in his notice published in the Federal Register an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

**[**(c) (1) Upon written request by representatives of a substantial segment of any industry which produces articles, materials and supplies, including technical data and other information, which are subject to export controls or are being considered for such controls because of their significance to the national security of the United States, the Secretary of Commerce shall appoint a technical advisory committee for any grouping of such articles, materials, and supplies,

including technical data and other information, which he determines is difficult to evaluate because of questions concerning technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, and, when appropriate, other Government departments and agencies. No person serving on any such committee who is representative of industry shall serve on such committee for more than four consecutive years.

[(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the levels of export controls applicable to any articles, materials, and supplies, including technical data or other information, and (D) exports subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Secretary shall include in each semiannual report required by section 10 of this Act an accounting of the consultations undertaken pursuant to this paragraph, the use made of the advice rendered by the technical advisory committees pursuant to this paragraph, and the contributions of the technical advisory committees to carrying out the policies of this Act. Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

[(3) Upon request of any member of any such committee, the Secretary may, if he determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

[(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the Chairman, unless the Chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this Act. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with regard to such termination or extension of that committee.

[(5) To facilitate the work of the technical advisory committees, the Secretary of Commerce, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls

which are in effect or contemplated for the grouping of articles, materials, and supplies with respect to which that committee furnishes advice.】

NATIONAL SECURITY CONTROLS

*SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2) (A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.*

*(2) (A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this subsection, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.*

*(B) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section.*

*(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status, but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may consider appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of factors specified in the preceding sentence.*

*(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.*

*(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.*

*(3) The Secretary shall issue regulations providing for continuous review of the list established pursuant to this subsection in order to carry out the policy set forth in section 3(2) (A) and the provisions*

of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States of goods and technology comparable to those controlled for export from the United States under this section.

(d) *Military Critical Technologies.*—(1) The Congress finds that the national interest requires that export controls under this section be focused primarily on military critical technologies, and that export controls under this section be removed insofar as possible from goods the export of which would not transfer military critical technologies to countries to which exports are controlled under this section.

(2) The Secretary of Defense shall develop a list of military critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how;

(B) keystone manufacturing, inspection, and test equipment;

and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a major advance in a weapons system of any such country.

(3) The list referred to in paragraph (2) shall—

(A) be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act; and

(B) provide for the removal of export controls under this section from goods the export of which would not transfer military critical technology to countries to which exports are controlled under this section, except for goods with intrinsic military utility;

(4) The list of military critical technologies developed by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list subject to the provisions of subsection (c) of this section.

(5) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.

(e) *EXPORT LICENSES.*—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license, in lieu of a validated license, to the maximum extent practicable, consistent with the national security of the United States.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a

*validated license under this section for the export of goods or technology only if—*

*(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;*

*(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or*

*(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.*

*(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.*

*(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.*

*(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral*



*export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination under paragraph (1) with respect to such goods or technology is warranted.*

*(3) Whenever the Secretary of State, in consultation with the Secretary, has reason to believe that the availability of any goods or technology from sources outside the United States can be prevented or eliminated by means of negotiations with other countries, the Secretary of State shall undertake such negotiations. The Secretary shall not make any determination under this subsection with respect to such goods or technology until the Secretary of State has had a reasonable amount of time to conclude such negotiations.*

*(4) In order to further effectuate the policies set forth in this paragraph, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this section. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in each report to the Congress made pursuant to section 14 of this Act.*

*(g) INDEXING.—In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other Government agency objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list.*

*(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under subsection (a) or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.*

(2) *Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.*

(3) *To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.*

(4) *Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a), and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f) (1) of this section, the Secretary shall take steps to verify such availability, and upon such verification shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.*

(i) **MULTILATERAL EXPORT CONTROLS.**—(1) *The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee of the Consultative Group (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:*

(A) *Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understanding, and other aspects of such agreement, and all changes thereto.*

(B) *Agreement to hold periodic meetings of such governments with high-level representation from such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.*

(C) *Agreement to reduce the scope of the export control imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.*

(D) *Agreement on more effective procedures for enforcing the export controls agreed to pursuant to subparagraph (C).*

(2) *The President shall include, in each annual report required by section 14 of this Act, a detailed report on the progress of the negotiations required by paragraph (1), until such negotiations are concluded.*

(3) *In any case in which goods or technology controlled for export by agreement of the Committee are exported from the United States to countries which participate in the Committee, no condition shall be imposed by the United States with respect to the further export of such goods or technology from such countries.*

(j) *COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States person who, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation, and which agreement is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report such agreement to the Secretary.*

(2) *The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.*

(k) *NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.*

#### FOREIGN POLICY CONTROLS

SEC. 6. (a) *AUTHORITY.—(1) In order to effectuate the policy set forth in paragraph (2) (B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its international responsibilities. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.*

(2) (A) *Whenever the Secretary makes any revision with respect to any goods, technology, or other information, or with respect to the countries or destinations affected by export controls imposed under this subsection, the Secretary shall publish in the Federal Register a notice of such revision, and shall specify in the notice that the revision relates to controls imposed under the authority contained in this subsection.*

(B) *Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section.*

(3) *In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section that the Secretary requests to review, and to appeal to the President any decision of the Secretary with respect to such license application.*

(b) **CRITERIA.**—*In determining whether to impose export controls under this section, the President, acting through the Secretary and the Secretary of State, shall consider—*

(1) *the likely effectiveness of the proposed controls in achieving their purpose, including the availability from other countries of any goods or technology comparable to goods or technology proposed for export controls under this section;*

(2) *the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effect to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;*

(3) *the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts; and*

(4) *the ability of the United States Government to enforce the proposed controls effectively.*

(c) **CONSULTATION WITH INDUSTRY.**—*The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (3) of subsection (b) and such other matters as the Secretary considers appropriate.*

(d) **ALTERNATIVE MEANS.**—*Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.*

(e) **NOTIFICATION TO CONGRESS.**—*The President in every possible instance shall consult with the Congress before imposing any export control under this section. Whenever the President imposes any export control with respect to any country under this section, he shall immediately notify the Congress of the imposition of such export control, and shall submit with such notification a report specifying—*

(1) *the reasons for the control, the purposes the control is designed to achieve, and the conditions under which the control will be removed;*

(2) *those considerations of the criteria set forth in subsection (b) which led him to determine that on balance such export control would further the foreign policy interests of the United States or fulfill its international responsibilities, including those criteria which were determined to be inapplicable;*

(3) *the nature and results of consultations with industry undertaken pursuant to subsection (c); and*

(4) *the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing the control without attempting any such alternative means.*

*To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. If the Congress, within sixty days after the receipt of such notification, adopts a concurrent resolution disapproving such export control, then such export control shall cease to be effective upon the adoption of the resolution. In the computation of such sixty-day period, there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die. The procedures set forth in section 130 of the Atomic Energy Act of 1954 shall apply to any concurrent resolution referred to in this subsection, except that any such resolution shall be reported by the appropriate committees of both Houses of Congress not later than forty-five days after the receipt of the notification submitted pursuant to this subsection.*

(f) *EXCLUSION FOR FOOD AND MEDICINE.—This section does not authorize export controls on food, medicine, or medical supplies. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of food, medicine, or medical supplies, under the International Emergency Economic Powers Act.*

(g) *TRADE EMBARGOES.—This section does not authorize the imposition by the United States of a total trade embargo on any country. This subsection shall not be construed to prohibit the President from imposing a trade embargo under the International Emergency Economic Powers Act.*

(h) *FOREIGN AVAILABILITY.—In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled for export under this section.*

(i) *INTERNATIONAL OBLIGATIONS.—The limitations contained in subsections (b), (c), (d), (f), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill commitments of the United States pursuant*

*to treaties to which the United States is a party, or to comply with decisions or other actions of international organizations of which the United States is a member.*

*(j) EXISTING CONTROLS.—The provisions of subsections (f) and (g) shall not apply to any export control on food or medicine or to any trade embargo in effect on the effective date of the Export Administration Act Amendments of 1979.*

*(k) CONTROL LIST.—The Secretary shall establish and maintain, as part of the community control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President for resolution. The Secretary shall issue regulations providing for periodic revision of such list for the purpose of eliminating export controls which are no longer necessary to fulfill the purpose set forth in subsection (a) of this section or are no longer advisable under the criteria set forth in subsection (b) of this section*

**[AUTHORITY] OTHER CONTROLS**

SEC. [4] 7. (a) (1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarter) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

[(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.]

[(b)] (a) (1) To effectuate the policies set forth in section 3(2) (C) of this Act, the President may prohibit or curtail the exportation, except under such rules and regulations as he shall prescribe, of any [articles, materials, or supplies, including technical data or any other information,] *goods* subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. In curtailing the exportation of any [articles, materials, or supplies] *goods* to effectuate the policy set forth in section 3(2) [(A)] (C) of this Act, the President is authorized and directed to allocate a portion of export licenses on the basis of factors other than a prior history of exportation. *Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.*

[(2) (A)] In administering export controls for national security purposes as prescribed in section 3(2) (C) of this Act, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of factors specified in the preceding sentence. The results of such review, together with the justification for United States policy in light of such factors, shall be reported to Congress not later than December 31, 1978, in the semi-annual report of the Secretary of Commerce required by section 10 of this Act, and in every second such report thereafter.

[(B)] Rules and regulations under this subsection may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data or any other information, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States. The President shall not impose export controls for national security purposes on the export of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those which would be subject to such controls, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the semiannual report required by section 10 of this Act. Where, in accordance with this paragraph, export controls are imposed for national security purposes notwithstanding foreign availability, the President shall take steps to initiate negotiations with the

governments of the appropriate foreign countries for the purpose of eliminating such availability.】

(2) *Upon imposing quantitative restrictions on exports of any goods to carry out the policy stated in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within fifteen days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.*

【(c) (1) To effectuate the policy set forth in section 3(2)(A) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any article, material, or supply (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of this Act. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection and in the last two sentences of section 7(c) of this Act.】

(b) (1) *To effectuate the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.*

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to 【each article, material, or supply】 *any goods* monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) *The Secretary shall consult with the Secretary of Energy to determine whether monitoring under this subsection is warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasifica-*



*tion plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.*

[(d) Nothing in this Act, or in the rules and regulations hereunder shall be construed to require authority or permission to export, except where required by the President to effect the policies set forth in section 3 of this Act.

[(e) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.]

[(f) (c) (1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determines that such exercise of authority is required to effectuate the policies set forth in clause (A) or (B) [or (C)] of paragraph (2) of section 3 of this Act.

(2) Upon approval of the Secretary [of Commerce], in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed pursuant to section 3(2) [(A)] (C) of this Act subsequent to such approval. The Secretary [of Commerce] may not grant approval hereunder unless he receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds that such commodities will eventually be exported, that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary [of Commerce] is authorized to issue such rules and regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section is exercised to prohibit or curtail the exportation of any agricultural commodity in order to effectuate the policies set forth in [clause (A) or (B) of] paragraph (2) (C) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(g) (1) It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within

90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued unless the Secretary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

[(2) (A) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection, the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant's response.

[(B) Whenever the Secretary determines that it is necessary to refer an export license application to an interagency review process for approval, he shall first, if the applicant so requests, provide the applicant with an opportunity to review any documentation to be submitted to such process for the purpose of describing the export in question, in order to determine whether such documentation accurately describes the proposed export.

[(3) In any denial of an export license application, the applicant shall be informed in writing of the specific statutory basis for such denial.

[(h) (1) The Congress finds that the defense posture of the United States may be seriously compromised if the Nation's goods and technology are exported to a controlled country without an adequate and knowledgeable assessment being made to determine whether export of such goods and technology will make a significant contribution to the military potential of such country. It is the purpose of this subsection to provide for such an assessment and to authorize the Secretary of Defense to review any proposed export of goods or technology to any such country and, whenever he determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

[(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the export control office to which licensing requests are made, the types and categories of transactions which should be reviewed by him to carry out the purpose of this subsection. Whenever a license or other authority is requested for the export of such goods or technology to any controlled country, the appropriate export control office or agency to whom such request is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to such

request prior to the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this subsection and, not later than 30 days after notification of the request shall—

[(A) recommend to the President that he disapprove any request for the export of any goods or technology to any controlled country if he determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

[(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

[(C) indicate that he does not intend to interpose an objection to the export of such goods or technology.

If the President notifies such office or agency, within 30 days after receiving a recommendation from the Secretary, that he disapproves such export, no license or other authorization may be issued for the export of such goods or technology to such country.

[(3) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense pursuant to this section, the President shall submit to the Congress a statement indicating his decision together with the recommendation of the Secretary of Defense.

[(4) As used in this subsection—

[(A) the term “goods or technology” means—

(i) machinery, equipment, capital goods, or computer software; or

(ii) any license or other arrangement for the use of any patent, trade secret, design, or plan with respect to any item described in clause (i);

[(B) the term “export control office” means any office or agency of the United States Government whose approval or permission is required pursuant to existing law for the export of goods or technology; and

[(C) the term “controlled country” means any Communist country as defined under section 620(f) of the Foreign Assistance Act of 1961.]

[(i)(d) In imposing export controls to effectuate the policy stated in section 3(2) [(A)] (C) of this Act, the President’s authority shall include but not be limited to, the imposition of export license fees.

[(j)(e) Petroleum products refined in United States Foreign-Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed pursuant to section 3(2) [(A)] (C) of this Act, except that, if the Secretary [of Commerce] finds that a product is in short supply, the Secretary [of Commerce] may issue such rules and regulations as may be necessary to limit exports.

[(k)(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

[(2) The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue rules and regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.]

[(f) (1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920, no domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to such section 28 (except any such crude oil which [(A) is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or] (A) is exported to the territory of an adjacent foreign state to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States, such exchange achieving, through convenience or increased efficiency of transportation, lower oil prices described in paragraph (2)(A)(ii) of this subsection for consumers in the United States, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States) may be exported from the United States, its territories and possessions, [during the 2-year period beginning on the date of enactment of this subsection] unless the requirements of paragraph (2) of this subsection are met.

[(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

[(A) the President makes and publishes an express finding that exports of such crude oil—

[(i) will not diminish the total quantity or quality of petroleum available to the United States,

[(ii) will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners,

[(iii) will be made only pursuant to contracts which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened,

[(iv) are in the national interest, and

[(v) are in accordance with the provisions of this Act; and

[(B) the President reports such findings to the Congress as an energy action (as defined in section 551 of the Energy Policy and Conservation Act).

The congressional review provisions of such section 551 shall apply to an energy action reported in accordance with this paragraph, except that for purposes of this paragraph, any reference in such section to a period of 15 calendar days of continuous session of Congress shall be deemed to be a reference to a period of 60 calendar days of continuous session of Congress and the period specified in subsection (f) (4) (A) of such section for committee action on a resolution shall be deemed to be 40 calendar days.]

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within three months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refineries which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil which is exported, and (II) commensurately reduced wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President reports such findings to the Congress and the Congress, within sixty days thereafter, passes a concurrent resolution approving such exports on the basis of the findings.

Findings of lower costs and prices described in subparagraph (A) (ii) should be audited and verified by the General Accounting Office at least semiannually.

(3) Notwithstanding any other provision of this section and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil otherwise subject to this subsection to any nation pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before May 1, 1979.

[(m)] (g) (1) Crime control and detection instruments and equipment shall be approved for export by the Secretary of Commerce only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand.

[(m)] No article, material, or supply, including technical data or other information, other than cereal grains and additional food products, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, may be exported to Uganda until the President determines and certifies to the Congress that the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights.]

(h) (1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section (3) (2) (C) of this Act, or imposed by the President under the International Emergency Economic Powers Act (50 U.S.C. App. 1701 et seq.) on account of a threat to the economy of the United States.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the head of any appropriate agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of the Export Administration Act Amendments of 1979.

#### FOREIGN BOYCOTTS

SEC. [4A.] 8. (a) (1) For the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) \*\*\*

\* \* \* \* \*

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary [of Commerce].

\* \* \* \* \*

(5) Rules and regulations pursuant to this subsection shall be issued not later than 90 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued, except that (A) rules and regulations prohibiting negative certification may take effect not later than 1 year

after the date of enactment of this section, and (B) a grace period shall be provided for the application of the rules and regulations issued pursuant to this subsection to actions taken pursuant to a written contract or other agreement entered into on or before May 16, 1977. Such grace period shall end on December 31, 1978, except that the Secretary [of Commerce] may extend the grace period for not to exceed 1 additional year in any case in which the Secretary finds that good faith efforts are being made to renegotiate the contract or agreement in order to eliminate the provisions which are inconsistent with the rules and regulations issued to paragraph (1).

\* \* \* \* \*

(b) (1) In addition to the rules and regulations issued pursuant to subsection (a) of this section, rules and regulations issued under section [4(b)] 6(a) of this Act shall implement the policies set forth in section 3(5).

(2) Such rules and regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary [of Commerce] together with such other information concerning such request as the Secretary may require for such action as he may deem appropriate for carrying out the policies of that section. Such person shall also report to the Secretary [of Commerce] whether he intends to comply and whether he has complied with such request. Any report filed pursuant to this paragraph after the date of enactment of this section shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any articles, materials, and supplies, including technical data and other information, to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary [of Commerce] shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary [of Commerce], may deem appropriate for carrying out the policies set forth in section 3(5) of this Act.

#### PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. [4B.] 9. (a) Any person who, in his domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a [commodity] *good* historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a [commodity] *good*, may transmit a petition of hardship to the Secretary [of Commerce] requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary [of Commerce] shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Not later than 30 days after receipt of any petition under subsection (a), the Secretary [of Commerce] shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's

basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary deems appropriate.

(c) For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of controls shall reflect the Secretary's consideration of such factors as—

(1) Whether denial would cause a unique hardship to the applicant which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary will take into account:

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the [commodity] good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular [commodity] good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits will not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the appellant.

**PROCEDURES FOR PROCESSING VALIDATED AND QUALIFIED GENERAL LICENSE APPLICATIONS**

**SEC. 10. (a) GENERAL RESPONSIBILITY OF THE SECRETARY; DESIGNATED OFFICIAL.**—(1) All export license applications required under Action shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section for objections by other agencies. The Secretary may not delegate the authority to deny any such application to any official holding a rank lower than Deputy Assistant Secretary.

(2) For purposes of this section, the term "designated official" means an official designated by the Secretary to carry out functions under this Act with respect to the administration of export licenses.

**(b) APPLICATIONS TO BE REVIEWED BY OTHER AGENCIES.**—(1) It is the intent of Congress that a determination with respect to any export license application be made to the maximum extent possible by the



*Secretary without referral of such application to any other Government agency.*

(2) *The head of any Government agency concerned with export controls may, within ninety days after the effective date of this section, and periodically thereafter, in consultation with the Secretary, determine the specific types and categories of license applications to be reviewed by such agency before the Secretary approves or disapproves any such application. The Secretary shall in accordance with the provisions of this section, submit to the agency involved any license application of any such type or category.*

(c) *INITIAL SCREENING.—Within ten days after the date on which any export license application is received, the designated official shall—*

(1) *sent to the applicant an acknowledgement of the receipt of the application and the date of the receipt;*

(2) *submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other agencies with respect to the application, and the rights of the applicant;*

(3) *return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section; and*

(4) *determine whether it is necessary to submit the application to any other agency and, if such submission is determined to be necessary, inform the applicant of the agency or agencies to which the application will be referred.*

(d) *ACTION BY THE DESIGNATED OFFICIAL.—Within thirty days after the date on which an export license application is received, the designated official shall—*

(1) *approve or disapprove the application and formally issue or deny the license, as the case may be or*

(2) (A) *submit the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to any other agencies pursuant to subsection (b) (2); and*

(B) *if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation submitted to such other agency with respect to such application.*

(e) *ACTION BY OTHER AGENCIES.—Any agency to which an application is submitted pursuant to subsection (d) (2) (A) shall submit to the designated official, within thirty days after the end of the thirty-day period referred to in subsection (d), any recommendations with respect to such application. Except as provided in paragraph (2), any such agency which does not so submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the designated official to have no objection to the approval of such application.*

(2) *If the head or acting head of any such agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review of the application by such agency, the agency shall have an*

*additional thirty-day period to submit its recommendations to the designated official. If such agency does not so submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the designated official to have no objection to the approval of the application.*

(f) *DETERMINATION BY THE DESIGNATED OFFICIAL.—(1) The designated official shall take into account any recommendation of an agency submitted with respect to an application to the designated official pursuant to subsection (e), and, within twenty days after the end of the appropriate period specified in subsection (e) for submission of such agency recommendations, shall—*

*(A) approve or disapprove the application and inform such agency of such approval or disapproval; or*

*(B) if unable to reach a decision with respect to the application, refer the application to the Secretary and notify such agency and the applicant of such referral.*

*(2) The designated official shall formally issue or deny the license, as the case may be, not more than ten days after such official makes a determination under paragraph (1)(A), unless any agency which submitted a recommendation to the designated official pursuant to subsection (e) with respect to the license application, notifies such official, within such ten-day period, that it objects to the determination of the designated official.*

*(3) The designated official shall fully inform the applicant, to the maximum extent consistent with the national security and foreign policy of the United States—*

*(A) within five days after a denial of the application, of the statutory basis for the denial, the policies in section 3 of this Act that formed the basis of the denial, the specific circumstances that led to the denial, and the applicant's right to appeal the denial to the Secretary under subsection (k) of this section; or*

*(B) in the case of a referral to the Secretary under paragraph (1)(B) or an objection by an agency under paragraph (2), of the specific questions raised and any negative considerations or recommendations made by an agency, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.*

(g) *ACTION BY THE SECRETARY.—(1) (A) In the case of an objection of an agency of which the designated official is notified under subsection (f) (2), the designated official shall refer the application to the Secretary. The Secretary shall consult with the head of such agency, and, within twenty days after such notification, shall approve or disapprove the license application and immediately inform such agency head of such approval or disapproval.*

*(B) In the case of a referral to the Secretary under subsection (f) (1) (B), the Secretary shall, within twenty days after notification of the referral is transmitted pursuant to such subsection, approve or disapprove the application and immediately inform any agency which submitted recommendations with respect to the application, of such approval or disapproval.*

*(2) The Secretary shall formally issue or deny the license, as the case may be, within ten days after approving or disapproving an application under paragraph (1), unless the head of the agency re-*

ferred to in paragraph (1) (A), of the head of an agency described in paragraph (1) (B), as the case may be, notifies the Secretary of his or her objection to the approval or disapproval.

(3) The Secretary shall immediately and fully inform the applicant, in accordance with subsection (f) (3), of any action taken under paragraph (1) or (2) of this subsection.

(4) The Secretary may not delegate the authority to carry out the actions required by this subsection to any official holding a rank lower than Deputy Assistant Secretary.

(h) ACTION BY THE PRESIDENT.—In the case of notification by an agency head, under subsection (g) (2), of an objection to the Secretary's decision with respect to an application, the Secretary shall immediately refer the application to the President. Within thirty days after such notification, the President shall approve or disapprove the application and the Secretary shall immediately issue or deny the license, in accordance with the President's decision. In any case in which the President does not approve or disapprove the application within such thirty-day period, the decision of the Secretary shall be final and the Secretary shall immediately issue or deny the license in accordance with the Secretary's decision.

(i) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever he determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the export control office to which licensing requests are made, the types and categories of transactions which should be reviewed by him in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the appropriate export control office or agency to which such request is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to the request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this paragraph and, not later than thirty days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of any goods or technology to any such country if he determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

*(C) indicate that he does not intend to interpose an objection to the export of such goods or technology.*  
*If the President notifies such office or agency, within thirty days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.*

*(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.*

*(j) MULTILATERAL REVIEW.—(1) In any case in which an application, which has been finally approved under subsection (d), (f), (g), (h), or (i) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval (and the date of such approval) of the application by the United States Government, subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within sixty days after such date, the Secretary's approval of the application shall be final and the license shall be issued. The Secretary shall institute such procedures for preparation of necessary documentation before final approval of the application by the United States Government as the Secretary considers necessary to implement the provisions of this paragraph.*

*(2) In any case in which the approval of the United States Government is sought by a foreign government for the export of goods or technology pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the Secretary of State, after consulting with other appropriate United States Government agencies, shall, within sixty days after the date on which the request for such approval is made, make a determination with respect to the request for approval. Any such other agency which does not submit a recommendation to the Secretary of State before the end of such sixty-day period shall be deemed by the Secretary of State to have no objection to the request for United States Government approval. The Secretary of State may not delegate the authority to disapprove a request for United States Government approval under this paragraph to any official of the Department of State holding a rank lower than Deputy Assistant Secretary.*

*(k) EXTENSION.—If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor.*

*(l) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.*

*(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under sub-*

*section (k) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.*

*(3) If, within thirty days after petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or, if the application has been brought into conformity with such requirements, the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief as appropriate.*

*(m) RECORDS.—The Secretary and any agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such agency.*

#### VIOLATIONS

**SEC. [6.] 11. [(a)** Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than \$25,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both. **]**

*(a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both.*

**[(b)** Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes, shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both. **]**

*(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes, shall be fined not more than five times the value of the exports involved or \$100,000, whichever is greater, or imprisoned not more than ten years, or both.*

**(c) (1)** The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

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(2) (A) The authority of this Act to suspend or revoke the authority of any United States person to export [articles, materials, supplies, or technical data or other information] *goods, technology, or other information*, may be used with respect to any violation of the rules and regulations issued pursuant to section [4A] 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the rules and regulations issued pursuant to section [4A] 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the rules and regulations issued pursuant to section [4A] 8(a) of this Act shall be made available for public inspection and copying.

\* \* \* \* \*

#### ENFORCEMENT

SEC. [7] 12. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of [the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 36)] *section 6002 of title 18, United States Code* shall apply with respect to any individual who specifically claims such privilege.

(c) Except as otherwise provided by the third sentence in section [4A] 8(b) (2) and by section [6] 11 (c) (2) (C) of his Act, no department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which [is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information] *would reveal the parties to an export or re-export transaction, the type of good or technology being exported or re-exported, or the destination, end use,*

*quantity, value, or price of such good or technology, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest. [Nothing in this Act shall be construed as authorizing the withholding of information from Congress, and any information obtained under this Act, including any report or license application required under section 4(b), shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction. No such committee or subcommittee shall disclose any information obtained under this Act which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest.] Nothing in this Act shall be construed as authorizing the withholding of information from Congress, and all information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction. No such committee or subcommittee shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest.*

(d) In the administration of this Act, reporting requirements shall be so designated as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first [quarterly] report made pursuant to section [10] 14 after such action is taken.

(e) The Secretary [of Commerce] in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5[(c)] (h), shall review the rules and regulations issued under this Act and the lists of [articles, materials, and supplies] *goods and technology* which are subject to export controls in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such list, or by any other means. [Not later than 1 year after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by section 10 of this Act.] *The Secretary shall include, in the annual report required by section 14 of this Act, actions taken on the basis of such review to simplify such rules and regulations.*

#### EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SEC. [8.] 13. Except as provided in section [6] 11(c) (2), the functions exercised under this Act are excluded from the operation of sections 551, 553-559, and 701-706, of title 5 United States Code.

**[INFORMATION TO EXPORTERS]**

**[SEC. 9.** In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

**[(1)** inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;

**[(2)** in the event of undue delay inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;

**[(3)** give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and

**[(4)** inform each exporter of the reasons for a denial of an export license request.]

**[REPORT]**

**[SEC. 10. (a)** The head of any department or agency, or other official exercising any functions under this Act, shall make a semiannual report, to the President and to the Congress of his operations hereunder.

**[(b) (1)** The report required for the first quarter of 1975 and every report thereafter shall include summaries of the information contained in the reports required by section 4(c) (2) of this Act, together with an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for articles, materials, or supplies subject to monitoring under this Act, (B) the worldwide supply of such articles, materials, and supplies, and (C) actions taken by other nations in response to such shortages or increased prices.

**[(2)** Each such report shall also contain an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970, (B) the worldwide supply of such commodities, and (C) actions being taken by other nations in response to such shortages or increased prices. The Secretary of Agriculture shall fully cooperate with the Secretary of Commerce in providing all information required by the Secretary of Commerce in making such analysis.

**[(c)** Each semiannual report shall include an accounting of—

**[(1)** any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed, pursuant to section 4(a) of this Act;

**[(2)** any changes in the exercise of the authorities of section 4(b) of this Act;



[(3) any delegations of authority under section 4(e) of this Act;

[(4) the disposition of export license applications pursuant to section 4 (g) and (h) of this Act;

[(5) consultations undertaken with technical advisory committees pursuant to section 5(c) of this Act;

[(6) violations of the provisions of this Act and penalties imposed pursuant to section 6 of this Act; and

[(7) a description of actions taken by the President and the Secretary of Commerce to effect the policies set forth in section 3(5) of this Act.]

#### ANNUAL REPORT

*SEC. 14. Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—*

*(1) the implementation of the policies set forth in section 3;*

*(2) general licensing activities under sections 5, 6, and 7;*

*(3) actions taken in compliance with section 5(c)(3);*

*(4) changes in categories of items under export control referred to in section 5(e);*

*(5) the operation of the indexing system under section 5(g);*

*(6) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;*

*(7) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;*

*(8) changes in policies toward individual countries under section 5(b);*

*(9) actions taken to carry out section 5(d);*

*(10) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;*

*(11) the implementation of section 8;*

*(12) export controls and monitoring under section 7;*

*(13) organizational and procedural changes undertaken to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an analysis of the time required to process license applications and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (l) of such section; and*

*(14) violations under section 11 and enforcement activities under section 12.*

#### REGULATORY AUTHORITY

*SEC. 15. The President and the Secretary may issue such rules and regulations as are necessary to carry out the provisions of this Act. Any such rules or regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, trans-*

*porting, or other servicing of exports and the participation therein by any person.*

DEFINITIONS

SEC. [11] 16. As used in this Act—

(1) the term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; [and]

(2) the term “United States person” means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President[.]; and

(3) the term “Secretary” means the Secretary of Commerce.

EFFECT ON OTHER ACTS

SEC. [12] 17. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under [section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934)] *section 38 of the Arms Export Control Act (22 U.S.C. 2778).*

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 13. (a) Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation.

[(b) There is hereby authorized to be appropriated to the Department of Commerce \$14,033,000 (and such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs) for fiscal years 1978 and 1979 to carry out the purposes of this Act.]

AUTHORIZATION OF APPROPRIATIONS

*SEC. 18(a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry*

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*out the purposes of this Act unless previously and specifically authorized by law.*

(b) *AUTHORIZATION.—(1) There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act \$7,070,000 for the fiscal year 1980 and \$7,777,000 for the fiscal year 1981 (and such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs).*

*(2) Of the funds appropriated to the Department of State for the fiscal year 1980, the Secretary of State may use such amounts as may be necessary to carry out the provisions of section 5(k) of this Act.*

#### EFFECTIVE DATE

SEC. [14] 19. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

#### TERMINATION DATE

SEC. [15] 20. The authority granted by this Act terminates on September 30, [1979] 1983, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

### SECTION 38 OF THE ARMS EXPORT CONTROL ACT

#### CHAPTER 3—MILITARY EXPORT CONTROLS

\* \* \* \* \*

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) (1) \* \* \*

\* \* \* \* \*

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by [sections 6 (c), (d), (e), and (f) and 7 (a) and (c) of the Export Administration Act of 1969] subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1969, and by subsections (a) and (c) of section 12 of such Act, subject to the same terms and conditions as are applicable to such powers under such Act. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress.

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ENERGY POLICY AND CONSERVATION ACT

\* \* \* \* \*

TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY  
AVAILABILITY

PART A—DOMESTIC SUPPLY

\* \* \* \* \*

DOMESTIC USE OF ENERGY SUPPLIES AND RELATED MATERIALS AND  
EQUIPMENT

SEC. 103. (a) \* \* \*

\* \* \* \* \*

(c) In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1969 (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2) **[(A)]**(C) of such Act), impose such restrictions as specified in any rule under subsection (a) on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

\* \* \* \* \*

TITLE II—STANDBY ENERGY AUTHORITIES

\* \* \* \* \*

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY  
PROGRAM

\* \* \* \* \*

EXCHANGE OF INFORMATION

SEC. 254. (a) (1) \* \* \*

\* \* \* \* \*

(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) \* \* \*

\* \* \* \* \*

(3) section **[7]** 12 of the Export Administration Act of 1969;

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**SECTION 993 OF THE  
INTERNAL REVENUE CODE OF 1954**

**Subtitle A—Income Taxes**

\* \* \* \* \*

**CHAPTER 1—NORMAL TAXES AND SURTAXES**

\* \* \* \* \*

**Subchapter N—Tax Based on Income From Sources Within or  
Without the United States**

\* \* \* \* \*

**PART IV—DOMESTIC INTERNATIONAL SALES  
CORPORATIONS**

\* \* \* \* \*

**Subpart A—Treatment of Qualifying Corporations**

\* \* \* \* \*

**SEC. 993. DEFINITIONS.**

(a) **QUALIFIED EXPORT RECEIPTS.**—

(c) **EXPORT PROPERTY.**— \* \* \*

(1) **IN GENERAL.**

\* \* \* \* \*

(2) **EXCLUDED PROPERTY.**—For purposes of this part, the term “export property” does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a) (3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A, or

(D) products the export of which is prohibited or curtailed under section [4(b)] 7(a) of the Export Administration Act of 1969 [(50 U. S. C. App. 2403(b))] to effectuate the policy set forth in paragraph (2) [(A)] (C) of section 3 of such Act (relating to the protection of the domestic economy).

**SECTION 9 OF THE INTERNATIONAL INVESTMENT SURVEY OF 1976**

**SEC. 9.** To carry out this Act, there [is] are authorized to be appropriated [\$4,000,000] \$4,100,000 for the fiscal year ending September 30, [1979.] 1980, and \$4,500,000 for the fiscal year ending September 30, 1981.

#### INDIVIDUAL VIEWS OF HON. EDWARD J. DERWINSKI

At a time of dollar inflation, a serious deficit in international trade, and the need to maintain our vital alliances abroad, the administration of U.S. export policy is a particularly important issue. It has long been a serious question and is even more so now.

This bill recognizes the importance of exports to the U.S. economy but maintains certain restrictions on those exports for reasons of national security, foreign policy, and short supply at home.

But of special concern in this bill are the restrictions of the McKinney-Wolpe amendment. This amendment absolutely prohibits the sale or barter of Alaskan oil to Japan. I believe that the administration should have enough flexibility to be able to swap Alaskan oil which we cannot refine on our West Coast for oil from other areas to be delivered to refineries on our East Coast. Should such a swap be advantageous in the future—should it save money at that time—it would be practical for the Administration to be able to follow through and not have its hands tied by this provision. I believe that an examination of our real security interests will show that we should afford ourselves the option to make the key decision in the future.

With a deficit of \$12 billion a year with Japan, I hope we can correct that problem, increase our economic leverage with them as a partial supplier of oil, maximize the production levels of the Alaskan pipeline, and by the offsetting agreements, help meet the needs of energy consumers throughout the country, but especially in our Eastern states.

This bill may be an appropriate vehicle for readjustment of our trade relationships with Zimbabwe-Rhodesia. Now that that country has passed a milestone in its efforts to establish democratic processes, it is clear that trade sanctions against Zimbabwe-Rhodesia are no longer appropriate. Inasmuch as an American-educated Methodist bishop has been freely elected to the country's highest executive post, it would be particularly appropriate for the United States now to extend the open hand of friendship and trade.

EDWARD J. DERWINSKI.

SUPPLEMENTAL VIEWS OF HON. EDWARD J. DERWIN-  
SKI, HON. DAVID R. BOWEN, HON. WILLIAM S. BROOM-  
FIELD, HON. LARRY WINN, JR., HON. ROBERT J. LAGO-  
MARSINO, AND HON. DAN QUAYLE

A necessary and just decision has been made by the Committee on Foreign Affairs in its recognition of the profound changes that have taken place in Uganda. There is hope from all quarters that the long, dark travail of Uganda's holocaust is at last near an end. The orgy of death and destruction inflicted on Uganda by Field Marshal Idi Amin is finally almost over. It is logical for us to help that unfortunate country restore itself.

Hopefully, much of this task can be accomplished through church organizations; Christian missionaries—those who were not butchered by that African despot, Amin—have been a traditionally strong element in Ugandan society, particularly in the area of education. Moreover, religious and charitable organizations, such as Catholic Relief Services, CARE, Protestant church groups, and many private voluntary organizations have long experience and excellent records for success in emergency humanitarian relief programs such as are now needed in Uganda.

However, this bill is an appropriate vehicle for lifting U.S. trade sanctions rightly imposed by Congress against the viciously totalitarian regime of Idi Amin. The legislative fight for those sanctions, appropriate at the time, was led by our colleague, the gentleman from Ohio, Mr. Pease, over the initial opposition of the Administration, which "in principle" opposed trade sanctions in general. The President can waive the trade sanctions against Uganda, which presumably he will do. However, it would be a more meaningful signal of our sympathy for the professed principles of the new Ugandan regime for Congress to conspicuously repeal outright in the bill the outdated existing trade sanctions legislation.

We wish to commend this initiative to lift the no longer warranted sanctions on Uganda now that its situation has changed for the better. Recognition of new realities is always devoutly to be wished. In this light, we also draw attention to the new objective conditions that exist in Zimbabwe-Rhodesia and the inapplicability of sanctions in that new situation. That unfortunate nation, in its desire to end the affliction of terror—in its own case, a Marxist terror largely supported from abroad—has properly altered its government structure.

In this regard, we wish to express our appreciation to the sponsors of this bill and to the Subcommittee on Africa chaired by our distinguished colleague, the gentleman from New York, Mr. Solarz. For in this bill we may have a possible and appropriate vehicle for the House to consider a carefully drafted amendment to also lift U.S. sanctions imposed on Zimbabwe-Rhodesia prior to the free and fair elections which resulted in the transition from minority rule to majority rule in that country.

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We strongly support this bill to help Uganda in its time of need. We wish to offer that same helping hand to the new black majority government democratically elected in Zimbabwe-Rhodesia.

ED DERWINSKI.  
DAVID R. BOWEN.  
WM. S. BROOMFIELD.  
LARRY WINN, Jr.  
BOB J. LAGOMARSINO  
DAN QUAYLE

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